CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, Notices, and Abstracts

Concerning Customs and Related Matters of the

Bureau of Customs and Border Protection

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

VOL. 37 **JULY 09, 2003** **NO. 28**

This issue contains:

DEPARTMENT OF HOMELAND SECURITY
BUREAU OF CUSTOMS AND BORDER PROTECTION

NOTICE

The decisions, rulings, regulations, notices and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the Bureau of Customs and Border Protection, Office of Finance, Logistics Division, National Support Services Center, Washington, DC 20229, of any such errors in order that corrections may be made before the bound volumes are published.

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Bureau of Customs and Border Protection

General Notices

PROPOSED COLLECTION; COMMENT REQUEST

CERTIFICATE OF REGISTRATION

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Certificate of Registration. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended without a change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 19558–19559) on April 21, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 28, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, D.C. 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–7285.

SUPPLEMENTARY INFORMATION:

The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing informa-

tion collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Certificate of Registration
OMB Number: 1651–0010
Form Number: Forms 4455 and 4457
Abstract: The Certificate of Registration is used to expedite free entry or entry at a reduced rate on foreign made personal articles which are taken abroad. The articles are dutiable each time they are brought into the United States unless there is acceptable proof of prior possession.
Current Actions: This submission is to extend the expiration date without a change to the burden hours.
Type of Review: Extension (without change)
Affected Public: Individuals, travelers.
Estimated Number of Respondents: 200,000
Estimated Time Per Respondent: 3 minutes
Estimated Total Annual Burden Hours: 10,000
Estimated Total Annualized Cost on the Public: $104,500
If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202–927–1429.

Dated: June 16, 2003

TRACEY DENNING,
Agency Clearance Officer,
Information Services Branch.

[Published in the Federal Register, June 27, 2003 (68 FR 38378)]

PROPOSED COLLECTION; COMMENT REQUEST

CREW MEMBER'S DECLARATION

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Crew Member's Declaration. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended without a change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 19555) on April 21, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 28, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, D.C. 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–7285.

SUPPLEMENTARY INFORMATION:

The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, in-

cluding the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Crew Members Declaration
OMB Number: 1651–0021
Form Number: Form–5129
Abstract: This document is used to accept and record importations of merchandise by crew members, and to enforce agricultural quarantines, the currency reporting laws, and the revenue collection laws.
Current Actions: This submission is to extend the expiration date without a change to the burden hours.
Type of Review: Extension (without change)
Affected Public: Individuals, Business or other for-profit.
Estimated Number of Respondents: 5,968,351
Estimated Time Per Respondent: 3 minutes
Estimated Total Annual Burden Hours: 298,418
Estimated Total Annualized Cost on the Public: $5,968,360
If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202–927–1429.

Dated: June 17, 2003

TRACEY DENNING,
Agency Clearance Officer,
Information Services Branch.

[Published in the Federal Register, June 27, 2003 (68 FR 38381)]

PROPOSED COLLECTION; COMMENT REQUEST

EXPORTATION OF USED SELF-PROPELLED VEHICLES

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following

information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Exportation of Used Self-Propelled Vehicles. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 19557–19558) on April 21, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 28, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, D.C. 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–7285.

SUPPLEMENTARY INFORMATION:

The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Exportation of Used-Propelled Vehicles
OMB Number: 1651–0054
Form Number: None
Abstract: The Exportation of Used-Propelled Vehicles requires the submission of documents verifying vehicle ownership of exporters for exportation of vehicles in the United States.
Current Actions: This submission is being submitted to extend the expiration date with a change to the burden hours.
Type of Review: Extension (with change)
Estimated Number of Respondents: 750,000
Estimated Time Per Respondent: 10 minutes
Estimated Total Annual Burden Hours: 125,000
Estimated Total Annualized Cost on the Public: $2,163,750
If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202–927–1429.

Dated: June 16, 2003

TRACEY DENNING,
Agency Clearance Officer,
Information Services Branch.

[Published in the Federal Register, June 27, 2003 (68 FR 38379)]

PROPOSED COLLECTION; COMMENT REQUEST

FOREIGN ASSEMBLER'S DECLARATION

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Foreign Assembler's Declaration. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended without a change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 19554) on April 21, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 28, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, D.C. 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–7285.

SUPPLEMENTARY INFORMATION:

The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Foreign Assembler's Declaration (with Endorsement by Importer)

OMB Number: 1651–0031

Form Number: N/A

Abstract: The Foreign Assembler's Declaration with Importer's Endorsement is used by CBP to substantiate a claim for duty free treatment of U.S. fabricated components sent abroad for assembly and subsequently returned to the United States.

Current Actions: This submission is to extend the expiration date without a change to the burden hours.

Type of Review: Extension (without change)

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 2,730

Estimated Time Per Respondent: 50 minutes
Estimated Total Annual Burden Hours: 302,402
Estimated Total Annualized Cost on the Public: $3,860,608.00
If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202–927–1429.

Dated: June 17, 2003

TRACEY DENNING,
Agency Clearance Officer,
Information Services Branch.

[Published in the Federal Register, June 27, 2003 (68 FR 38381)]

PROPOSED COLLECTION; COMMENT REQUEST

IMPORTER'S INPUT RECORD

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Importer's Input Record. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended without a change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 19559–19560) on April 21, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 28, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington,

D.C. 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–7285.

SUPPLEMENTARY INFORMATION:

The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Importers ID Input Record
OMB Number: 1651–0064
Form Number: Form–5106
Abstract: This document is filed with the first formal entry which is submitted or the first request for services that will result in the issuance of a bill or a refund check upon adjustment of a cash collection.
Current Actions: This submission is to extend the expiration date without a change to the burden hours.
Type of Review: Extension (without change)
Affected Public: Business or other for-profit.
Estimated Number of Respondents: 500
Estimated Time Per Respondent: 6 minutes
Estimated Total Annual Burden Hours: 100
Estimated Total Annualized Cost on the Public: $13,750
If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202–927–1429.

Dated: June 27, 2003

TRACEY DENNING,
Agency Clearance Officer,
Information Services Branch.

[Published in the Federal Register, June 27, 2003 (68 FR 38379)]

PROPOSED COLLECTION; COMMENT REQUEST

PETROLEUM REFINERIES IN FOREIGN TRADE

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Petroleum Refineries in Foreign Trade. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended without a change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 19557–19558) on April 21, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 28, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, D.C. 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–7285.

SUPPLEMENTARY INFORMATION:

The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of

1995 (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Petroleum Refineries in Foreign Trade Subzones
OMB Number: 1651–0063
Form Number: None
Abstract: The Petroleum Refineries in Foreign Trade Subzones is a rule that amended the regulations by adding special procedures and requirements governing the operations of crude petroleum and refineries approved as foreign trade zones.
Current Actions: This submission is to extend the expiration date without a change to the burden hours.
Type of Review: Extension (without change)
Affected Public: Business or other for-profit.
Estimated Number of Respondents: 18
Estimated Time Per Respondent: 732
Estimated Total Annual Burden Hours: 13,176
Estimated Total Annualized Cost on the Public: $329,400
If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202–927–1429.

Dated: June 16, 2003

TRACEY DENNING,
Agency Clearance Officer,
Information Services Branch.

[Published in the Federal Register, June 27, 2003 (68 FR 38380)]

PROPOSED COLLECTION; COMMENT REQUEST

PROTEST

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Protest. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended without a change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 19555–19556) on April 21, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 28, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, D.C. 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–7285.

SUPPLEMENTARY INFORMATION:

The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Protest
OMB Number: 1651–0017
Form Number: Form 19
Abstract: This collection is used by an importer, filer, or any party at interest to petition CBP, or Protest, any action or charge, made by the port director on or against any; imported merchandise, merchandise excluded from entry, or merchandise entered into or withdrawn from a bonded warehouse.
Current Actions: This submission is to extend the expiration date without a change to the burden hours.
Type of Review: Extension (without change)
Affected Public: Business or other for-profit.
Estimated Number of Respondents: 3,750
Estimated Time Per Respondent: 30 minutes
Estimated Total Annual Burden Hours: 67,995
Estimated Total Annualized Cost on the Public: $1,167,247
If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202–927–1429.

Dated: June 27, 2003

TRACEY DENNING,
Agency Clearance Officer,
Information Services Branch.

[Published in the Federal Register, June 27, 2003 (68 FR 38378)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, June 25, 2003,

The following documents of the Bureau of Customs and Border Protection ("CBP"), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

MICHAEL T. SCHMITZ,
Assistant Commissioner,
Office of Regulations and Rulings.

19 CFR PART 177

REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF BATTERY PACKS FOR MOBILE CELLULAR TELEPHONES; CORRECTION

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Correction.

SUMMARY: This document makes a correction to the above-described document which was published in the *Customs Bulletin* on June 25, 2003. The correction pertains to the Effective Date of the action with respect to this document. The action is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 25, 2003.

FOR FURTHER INFORMATION CONTACT: Gerry O'Brien, General Classification Branch 202–572–8780.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On June 25, 2003, a notice was published in the Customs Bulletin revoking a ruling letter and revoking treatment relating to tariff classification of battery packs for mobile cellular telephones.

In the notice published on June 25, 2003, the Effective Date of the action was stated incorrectly. In that notice, the EFFECTIVE DATE section is hereby amended to read as follows: "This action is effective

for merchandise entered or withdrawn from warehouse for consumption on or after August 25, 2003."

DATED: June 27, 2003.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

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19 CFR PART 177

PROPOSED MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF CERTAIN GLASS ARTICLES WITH WIRE BAIL AND TRIGGER, RUBBER RING CLOSURE SYSTEMS; CORRECTION

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Correction.

SUMMARY: This document makes a correction to the above-described document which was published in the *Customs Bulletin* on June 25, 2003. The correction pertains to the Date comments must be received. Comments must be received on or before July 25. 2003.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich, General Classification Branch 202–572–8776.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On June 25, 2003, a notice was published in the Customs Bulletin proposing to modify a ruling letter and revoke treatment relating to tariff classification of certain glass articles with wire bail and trigger, rubber ring closure systems.

In the notice published on June 25, 2003, the date comments must be received was stated incorrectly. In that notice, the DATE section is hereby amended to read as follows: "Comments must be received on or before July 25, 2003."

DATED: June 27, 2003.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

19 CFR PART 177

MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF HAND PAPER PUNCHES; CORRECTION

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Correction.

SUMMARY: This document makes a correction to the above-described document which was published in the *Customs Bulletin* on June 25, 2003. The correction pertains to the Effective Date of the action with respect to this document. The action is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 25, 2003.

FOR FURTHER INFORMATION CONTACT: Gerry O'Brien, General Classification Branch 202–572–8780.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On June 25, 2003, a notice was published in the Customs Bulletin revoking a ruling letter and revoking treatment relating to tariff classification of hand paper punches.

In the notice published on June 25, 2003, the Effective Date of the action was stated incorrectly. In that notice, the EFFECTIVE DATE section is hereby amended to read as follows: "This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 25, 2003."

DATED: June 27, 2003.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

19 CFR PART 177

MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF AN INK JET COLOR PREPARATION; CORRECTION

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Correction.

SUMMARY: This document makes a correction to the above-described document which was published in the *Customs Bulletin* on June 25, 2003. The correction pertains to the Effective Date of the action with respect to this document. The action is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 25, 2003.

FOR FURTHER INFORMATION CONTACT: Gerry O'Brien, General Classification Branch 202–572–8780.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On June 25, 2003, a notice was published in the Customs Bulletin revoking a ruling letter and revoking treatment relating to tariff classification of an ink jet color preparation.

In the notice published on June 25, 2003, the Effective Date of the action was stated incorrectly. In that notice, the EFFECTIVE DATE section is hereby amended to read as follows: "This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 25, 2003."

DATED: June 27, 2003.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

REVOCATION AND MODIFICATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF UMBRELLA BASES AND UMBRELLA BASE RINGS

AGENCY: Bureau of Customs & Border Protection; Department of Homeland Security

ACTION: Notice of revocation and modification of ruling letters and revocation of treatment relating to the tariff classification of umbrella bases and umbrella base rings.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs & Border Protection (CBP) is revoking three ruling letters and modifying one ruling letter pertaining to the tariff classification of umbrella bases and umbrella base rings under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is

also revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published on April 30, 2003, in Volume 37, Number 18, of the CUSTOMS BULLETIN. CBP received no comments in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 9, 2003.

FOR FURTHER INFORMATION CONTACT: Rebecca Hollaway, Textiles Branch, at (202) 572–8814.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts that emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by Title VI, notice proposing to revoke New York Ruling Letter (NY) G88950, dated April 9, 2001, NY G83051, dated October 25, 2000, and NY H80212, dated June 7, 2001, to modify NY G85932, dated January 11, 2001, and to revoke any treatment accorded to substantially identical merchandise was published in the April 30, 2003, CUSTOMS BULLETIN, Volume 37, Number 18. CBP received no comments.

In NY G85932, dated January 11, 2001 and NY G88950, dated April 9, 2001, CPB classified cement umbrella bases and/or rings as other articles of cement under subheading 6810.99.0000, HTSUS. In NY H80212, dated June 7, 2001, CPB classified a plastic umbrella base as an other household article of plastic under subheading

3924.90.5500, HTSUS. In NY G83051, dated October 25, 2000, CBP classified a cast iron umbrella base ring as an other article of metal under subheading 7325.99.1000, HTSUS. CBP now finds that the umbrella bases and/or rings are properly classified under subheading 6603.90.8000, HTSUS.

As stated in the notice of proposed revocation, this notice covers any rulings on the subject merchandise which may exist but which have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised CBP during the comment period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY G88950, NY G83051 and NY H80212, modifying NY G85932, and revoking any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 966247, 966352, 966353 and 966354, which are attached to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

DATED: June 12, 2003

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966247
June 16, 2003
CLA–2 RR:CR:TE 966247 RH
CATEGORY: Classification
TARIFF NO.: 6603.90.8000

MS. LAURIE J. SHOWERS
GROSSFILLEX, INC.
1575 Joel Drive
Lebanon, PA 17046–8376

RE: Revocation of NY G88950, dated April 9, 2001; Classification of an umbrella base ring composed of cement; Parts and Accessories; Heading 6810; Heading 6603; Additional U.S. Rule of Interpretation 1(c), HTSUS

DEAR MS. SHOWERS:

On April 9, 2001, Customs (now Customs and Border Protection (CBP)) issued New York Ruling Letter (NY) G88950 to you concerning the classification of an umbrella base ring composed of cement. In that ruling, CBP classified the umbrella base ring under subheading 6810.99.0000 of the Harmonized Tariff Schedule of the United States (HTSUS), as an article of cement. Merchandise liquidated under that tariff provision is duty free.

For the reasons set forth below, we find that NY G88950 was incorrect and that the proper classification of the cement umbrella base ring is under subheading 6603.90.8000, HTSUS, as an accessory to an umbrella. Merchandise liquidated under that tariff provision is dutiable at 5.2 percent *ad valorem*.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY G88950 was published on April 30, 2003, in Vol. 37, No. 18 of the CUSTOMS BULLETIN. CBP received no comments.

FACTS:

A description of the merchandise in NY G88950 reads as follows:

> The subject merchandise is described as an umbrella base ring that is composed of cement and weighs approximately thirty-five pounds. You indicated in your letter that the base ring will be placed on top of an umbrella base thus adding extra weight and support to the umbrella base.

ISSUE:

Is the cement umbrella base ring classified under heading 6810, HTSUS, as an article of cement or under heading 6603, HTSUS, as "parts, trimmings and accessories" of umbrellas?

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI's taken in order.

Additionally, the Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System constitute the official interpretation of the nomenclature at the international level. The EN are not legally binding. However, they do represent the considered views of classification experts of the Harmonized System Committee. It has therefore been the practice of CBP to follow, whenever possible, the terms of the EN when interpreting the HTSUS.

Heading 6810, HTSUS, provides for "Articles of cement, of concrete or of artificial stone, whether or not reinforced." Heading 6603, HTSUS, provides for "Parts, trim-

mings and accessories of articles of heading 6601 or 6602." Heading 6601 encompasses umbrellas and sun umbrellas.

Additional U.S. Rule of Interpretation 1(c), HTSUS, states that in the absence of special language or context which otherwise requires—

> (c) provision for parts of an article covers products solely or principally used as a part of such articles but a provision for "parts" or "parts and accessories" shall not prevail over a specific provision for such part or accessory;

There is not a specific provision in the HTSUS for the umbrella base ring. Therefore, in accordance with Additional U.S. Rule of Interpretation 1(c), HTSUS, if the article is a part or accessory to an umbrella subheading 6603.90.8000, HTSUS, will prevail over subheading 6810.99.0000, HTSUS, which is a residual provision for other articles of cement.

The term "accessory" is not defined in either the tariff schedule or the Explanatory Notes. An accessory is generally an article that is not necessary to enable the goods with which it is used to fulfill their intended function. An accessory must be identifiable as being intended solely or principally for use with a specific article. Accessories are of secondary or subordinate importance, not essential in and of themselves. They must, however, somehow contribute to the effectiveness of the principal article (e.g., facilitate the use or handling of the principal article, widen the range of its uses, or improve its operation.) See Headquarters Ruling Letter (HQ) 087704, dated September 27, 1990.

On the other hand, it is a well-established rule that a part of an article is something necessary to the completion of that article. It is an integral, constituent or component part without which the article to which it is to be joined could not function as such article. *Clipper Belt Lacer Co., Inc. v. United States*, 14 CIT 146 (1990). The definition of "parts" was discussed recently in *Rollerblade, Inc. v. United States*, 283 F.3d 1349 (Fed. Cir. 2002). In that case, the court defined parts as "an essential element or constituent; integral portion which can be separated, replaced, etc." *Id.* at 1353 (citing *Webster's New World Dictionary* 984 (3d College Ed. 1988)). See HQ 966133, dated March 11, 2003.

Note 2 to Chapter 66, HTSUS, reads:

> Heading 6603 does not cover parts, trimmings or accessories of textile material, or covers, tassels, thongs, umbrella cases or the like, of any material. Such goods entered with, but not fitted to, articles of heading 6601 or 6602 are to be classified separately and are not to be treated as forming part of those articles.

In addition to the chapter note, the EN to heading 6603 provides guidance on the scope of heading 6603, HTSUS. The EN reads, in its entirety:

> This heading **excludes** parts, trimmings and accessories, of textile material, and covers, tassels, thongs, umbrella cases and the like of any material; these are classified separately even when presented with, but not fitted to, umbrellas, sun umbrellas, walking-sticks, etc. (see Note 2 to this Chapter). With these **exceptions**, the heading covers identifiable parts, fittings and accessories for articles of heading 66.01 or 66.02.
>
> These remain classified here regardless of their constituent material (including precious metal or metal clad with precious metal or natural, synthetic or reconstructed precious or semi-precious stones). They include:
>
> (1) Handles (including blanks identifiable as unfinished handles) and knobs for umbrellas, sun umbrellas, walking-sticks, whips, etc.
> (2) Frames, including frames mounted on sticks, and ribs and stretchers for frames.
> (3) Shafts (sticks), whether or not combined with handles or knobs, for umbrellas or sun umbrellas.
> (4) Stocks for whips or riding-crops.
> (5) Runners, rib tips, open cups and tip cups, ferrules, springs, collars, tilting de-

vices for adjusting the top of the umbrella at an angle to the mast, spikes, ground plates for seat-sticks and the like, etc.

While the umbrella base ring is not one of the exemplars listed in the EN, it is an accessory to an umbrella. It aids in securing and holding the umbrella in place and clearly contributes to the effectiveness of the principal article.

Moreover, CBP's classification of umbrella bases of various materials as accessories under heading 6603, HTSUS is consistent with prior rulings. See NY 950999, dated April 24, 1990 (a polyethylene umbrella base classifiable under subheading 6603.90.0009, HTSUS), NY 818590, dated February 26, 1996 (umbrella stands made of metal with a cement, pebble or terrazzo base classifiable under subheading 6603.90.8000, HTSUS), and NY C82792, dated January 7, 1998) (cast iron umbrella base classifiable under 6603.90.8000, HTSUS).

Accordingly, we find that the umbrella base ring is classifiable under subheading 6603.90.8000, HTSUS, as an accessory to an umbrella.

HOLDING:

NY G88950 is REVOKED.

The cement umbrella base is classifiable under subheading 6603.90.8000, HTSUS, which provides for "Parts, trimmings and accessories of articles of heading 6601 or 6602: Other: Other." It is dutiable at the general column one rate at 5.2 percent *ad valorem*.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966352
June 16, 2003
CLA–2 RR:CR:TE 966352 RH
CATEGORY: Classification
TARIFF NO.: 6603.90.8000

MS. LAURIE J. SHOWERS
GROSSFILLEX, INC.
1575 Joel Drive
Lebanon, PA 17046–8376

RE: Modification of NY G85932, dated January 11, 2001; Classification of an umbrella base composed of cement and a plastic umbrella base ring; Parts and Accessories; Heading 6810; Heading 3926; Heading 6603; Additional U.S. Rule of Interpretation 1(c), HTSUS

DEAR MS. SHOWERS:

On January 11, 2001, Customs (now Customs and Border Protection (CBP)) issued New York Ruling Letter (NY) G85932 to you concerning the classification of an umbrella base and umbrella base ring, among other articles.

FACTS:

The umbrella base is composed of cement and the umbrella base ring is plastic. In NY G85932, CBP classified the umbrella base under subheading 6810.99.0000 of the Harmonized Tariff Schedule of the United States (HTSUS), as an other article of cement. CBP classified the plastic umbrella base under subheading 3926.90.9880, HTSUS, as an other article of plastic.

For the reasons set forth below, we find that NY G85932 was incorrect and that the proper classification of the cement umbrella base and the plastic umbrella base ring is under subheading 6603.90.8000, HTSUS, as accessories to an umbrella.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY G85932 was published on April 30, 2003, in Vol. 37, No. 18 of the CUSTOMS BULLETIN. CBP received no comments.

ISSUES:

Is the cement umbrella base classified under heading 6810, HTSUS, as an article of cement or under heading 6603, HTSUS, as "parts, trimmings and accessories" of umbrellas?

Is the plastic umbrella base ring classified under heading 3926, HTSUS, as an article of plastic or under heading 6603, HTSUS, as "parts, trimmings and accessories" of umbrellas?

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI's taken in order.

Additionally, the Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System constitute the official interpretation of the nomenclature at the international level. The EN are not legally binding. However, they do represent the considered views of classification experts of the Harmonized System Committee. It has therefore been the practice of CBP to follow, whenever possible, the terms of the EN when interpreting the HTSUS.

Heading 6810, HTSUS, provides for "Articles of cement, of concrete or of artificial stone, whether or not reinforced." Heading 3926, HTSUS, provides for "Other articles of plastics and articles of the materials of headings 3901 to 3914." Heading 6603, HTSUS, provides for "Parts, trimmings and accessories of articles of heading 6601 or 6602." Heading 6601 encompasses umbrellas and sun umbrellas.

Additional U.S. Rule of Interpretation 1(c), HTSUS, states that in the absence of special language or context which otherwise requires—

> (c) a provision for parts of an article covers products solely or principally used as a part of such articles but a provision for "parts" or "parts and accessories" shall not prevail over a specific provision for such part or accessory;

There is not a specific provision in the HTSUS for the umbrella base or umbrella base ring. Therefore, in accordance with Additional U.S. Rule of Interpretation 1(c), HTSUS, if the articles are a part or accessory to an umbrella subheading 6603.90.8000, HTSUS, will prevail over subheadings 6810.99.0000 and 3926.90.9880, HTSUS, which are residual provisions for other articles of cement and other articles of plastics, respectively.

The term "accessory" is not defined in either the tariff schedule or the Explanatory Notes. An accessory is generally an article that is not necessary to enable the goods with which it is used to fulfill their intended function. An accessory must be identifiable as being intended solely or principally for use with a specific article. Accessories are of secondary or subordinate importance, not essential in and of themselves. They must, however, somehow contribute to the effectiveness of the principal article (e.g., facilitate the use or handling of the principal article, widen the range of its uses, or improve its operation.) See Headquarters Ruling Letter (HQ) 087704, dated September 27, 1990.

On the other hand, it is a well-established rule that a part of an article is something necessary to the completion of that article. It is an integral, constituent or component part without which the article to which it is to be joined could not function as such article. *Clipper Belt Lacer Co., Inc. v. United States*, 14 CIT 146 (1990). The definition

of "parts" was discussed recently in *Rollerblade, Inc. v. United States*, 283 F.3d 1349 (Fed. Cir. 2002). In that case, the court defined parts as "an essential element or constituent; integral portion which can be separated, replaced, etc." *Id.* at 1353 (citing *Webster's New World Dictionary* 984 (3d College Ed. 1988)). See HQ 966133, dated March 11, 2003.

Note 2 to Chapter 66, HTSUS, reads:

> Heading 6603 does not cover parts, trimmings or accessories of textile material, or covers, tassels, thongs, umbrella cases or the like, of any material. Such goods entered with, but not fitted to, articles of heading 6601 or 6602 are to be classified separately and are not to be treated as forming part of those articles.

In addition to the chapter note, the EN to heading 6603 provides guidance on the scope of heading 6603, HTSUS. The EN reads, in its entirety:

> This heading **excludes** parts, trimmings and accessories, of textile material, and covers, tassels, thongs, umbrella cases and the like of any material; these are classified separately even when presented with, but not fitted to, umbrellas, sun umbrellas, walking-sticks, etc. (see Note 2 to this Chapter). With these **exceptions**, the heading covers identifiable parts, fittings and accessories for articles of heading 66.01 or 66.02.

These remain classified here regardless of their constituent material (including precious metal or metal clad with precious metal or natural, synthetic or reconstructed precious or semi-precious stones). They include:

> (1) Handles (including blanks identifiable as unfinished handles) and knobs for umbrellas, sun umbrellas, walking-sticks, whips, etc.
> (2) Frames, including frames mounted on sticks, and ribs and stretchers for frames.
> (3) Shafts (sticks), whether or not combined with handles or knobs, for umbrellas or sun umbrellas.
> (4) Stocks for whips or riding-crops.
> (5) Runners, rib tips, open cups and tip cups, ferrules, springs, collars, tilting devices for adjusting the top of the umbrella at an angle to the mast, spikes, ground plates for seat-sticks and the like, etc.

While the umbrella base and umbrella base ring are not one of the exemplars listed in the EN, they are accessories to an umbrella. They aid in securing and holding the umbrella in place and clearly contribute to the effectiveness of the principal article.

Moreover, CBP's classification of umbrella bases of various materials as accessories under heading 6603, HTSUS is consistent with prior rulings. See NY 950999, dated April 24, 1990 (a polyethylene umbrella base classifiable under subheading 6603.90.0009, HTSUS), NY 818590, dated February 26, 1996 (umbrella stands made of metal with a cement, pebble or terrazzo base classifiable under subheading 6603.90.8000, HTSUS), and NY C82792, dated January 7, 1998) (cast iron umbrella base classifiable under 6603.90.8000, HTSUS).

Accordingly, we find that the umbrella base and umbrella base ring are classifiable under subheading 6603.90.8000, HTSUS, as accessories to an umbrella.

HOLDING:

NY G85932 is REVOKED.

The cement umbrella base and plastic umbrella base ring are classifiable under subheading 6603.90.8000, HTSUS, which provides for "Parts, trimmings and accessories of articles of heading 6601 or 6602: Other: Other." They are dutiable at the general column one rate at 5.2 percent *ad valorem*.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966353
June 16, 2003
CLA–2 RR:CR:TE 966353 RH
CATEGORY: Classification
TARIFF NO.: 6603.90.8000

MS. LAURIE J. SHOWERS
GROSSFILLEX, INC.
1575 Joel Drive
Lebanon, PA 17046–8376

RE: Revocation of NY H80212, dated June 7, 2001; Classification of an umbrella base composed of plastic; Parts and Accessories; Heading 3924; Heading 6603; Additional U.S. Rule of Interpretation 1(c), HTSUS

DEAR MS. SHOWERS:

On June 7, 2001, Customs (now Customs and Border Protection (CBP)) issued New York Ruling Letter (NY) H80212 to you concerning the classification of an umbrella base composed of plastic. In that ruling, CBP classified the umbrella base under subheading 3924.90.5500 of the Harmonized Tariff Schedule of the United States (HTSUS), as an other household article of plastics.

For the reasons set forth below, we find that NY H80212 was incorrect and that the proper classification of the plastic umbrella base is under subheading 6603.90.8000, HTSUS, as an accessory to an umbrella.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY H80212 was published on April 30, 2003, in Vol. 37, No. 18 of the CUSTOMS BULLETIN. CBP received no comments.

FACTS:

A description of the merchandise in NY H80212 reads as follows:

> The umbrella base is 100 percent resin and it is available in four colors. The umbrella base weighs 3.5 pounds. It will be sold primarily to retail stores for household patio and poolside use.

ISSUE:

Is the plastic umbrella base classified under heading 3924, HTSUS, as a household article of plastics or under heading 6603, HTSUS, as "parts, trimmings and accessories" of umbrellas?

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI's taken in order.

Additionally, the Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System constitute the official interpretation of the nomenclature at

the international level. The EN are not legally binding. However, they do represent the considered views of classification experts of the Harmonized System Committee. It has therefore been the practice of CBP to follow, whenever possible, the terms of the EN when interpreting the HTSUS.

Heading 3924, HTSUS, provides for "Tableware, kitchenware, other household articles and toilet articles, of plastics." Heading 6603, HTSUS, provides for "Parts, trimmings and accessories of articles of heading 6601 or 6602." Heading 6601 encompasses umbrellas and sun umbrellas.

Additional U.S. Rule of Interpretation 1(c), HTSUS, states that in the absence of special language or context which otherwise requires—

> (c) a provision for parts of an article covers products solely or principally used as a part of such articles but a provision for "parts" or "parts and accessories" shall not prevail over a specific provision for such part or accessory;

There is not a specific provision in the HTSUS for the umbrella base. Therefore, in accordance with Additional U.S. Rule of Interpretation 1(c), HTSUS, if the article is a part or accessory to an umbrella subheading 6603.90.8000, HTSUS, will prevail over subheading 3924.90.5500, HTSUS, which is a residual provision for other household articles of plastics.

The term "accessory" is not defined in either the tariff schedule or the Explanatory Notes. An accessory is generally an article that is not necessary to enable the goods with which it is used to fulfill their intended function. An accessory must be identifiable as being intended solely or principally for use with a specific article. Accessories are of secondary or subordinate importance, not essential in and of themselves. They must, however, somehow contribute to the effectiveness of the principal article (e.g., facilitate the use or handling of the principal article, widen the range of its uses, or improve its operation.) See Headquarters Ruling Letter (HQ) 087704, dated September 27, 1990.

On the other hand, it is a well-established rule that a part of an article is something necessary to the completion of that article. It is an integral, constituent or component part without which the article to which it is to be joined could not function as such article. *Clipper Belt Lacer Co., Inc. v. United States*, 14 CIT 146 (1990). The definition of "parts" was discussed recently in *Rollerblade, Inc. v. United States*, 283 F.3d 1349 (Fed. Cir. 2002). In that case, the court defined parts as "an essential element or constituent; integral portion which can be separated, replaced, etc." *Id. at 1353 (citing Webster's New World Dictionary* 984 (3d College Ed. 1988)). See HQ 966133, dated March 11, 2003.

Note 2 to Chapter 66, HTSUS, reads:

> Heading 6603 does not cover parts, trimmings or accessories of textile material, or covers, tassels, thongs, umbrella cases or the like, of any material. Such goods entered with, but not fitted to, articles of heading 6601 or 6602 are to be classified separately and are not to be treated as forming part of those articles.

In addition to the chapter note, the EN to heading 6603 provides guidance on the scope of heading 6603, HTSUS. The EN reads, in its entirety:

> This heading **excludes** parts, trimmings and accessories, of textile material, and covers, tassels, thongs, umbrella cases and the like of any material; these are classified separately even when presented with, but not fitted to, umbrellas, sun umbrellas, walking-sticks, etc. (see Note 2 to this Chapter). With these **exceptions**, the heading covers identifiable parts, fittings and accessories for articles of heading 66.01 or 66.02.

These remain classified here regardless of their constituent material (including precious metal or metal clad with precious metal or natural, synthetic or reconstructed precious or semi-precious stones). They include:

> (1) Handles (including blanks identifiable as unfinished handles) and knobs for umbrellas, sun umbrellas, walking-sticks, whips, etc.

(2) Frames, including frames mounted on sticks, and ribs and stretchers for frames.
(3) Shafts (sticks), whether or not combined with handles or knobs, for umbrellas or sun umbrellas.
(4) Stocks for whips or riding-crops.
(5) Runners, rib tips, open cups and tip cups, ferrules, springs, collars, tilting devices for adjusting the top of the umbrella at an angle to the mast, spikes, ground plates for seat-sticks and the like, etc.

While the umbrella base is not one of the exemplars listed in the EN, it is an accessory to an umbrella. It aids in securing and holding the umbrella in place and clearly contributes to the effectiveness of the principal article.

Moreover, CBP's classification of umbrella bases of various materials as accessories under heading 6603, HTSUS is consistent with prior rulings. See NY 950999, dated April 24, 1990 (a polyethylene umbrella base classifiable under subheading 6603.90.0009, HTSUS), NY 818590, dated February 26, 1996 (umbrella stands made of metal with a cement, pebble or terrazzo base classifiable under subheading 6603.90.8000, HTSUS), and NY C82792, dated January 7, 1998) (cast iron umbrella base classifiable under 6603.90.8000, HTSUS).

Accordingly, we find that the umbrella base is classifiable under subheading 6603.90.8000, HTSUS, as an accessory to an umbrella.

HOLDING:

NY H80212 is REVOKED.

The plastic umbrella base is classifiable under subheading 6603.90.8000, HTSUS, which provides for "Parts, trimmings and accessories of articles of heading 6601 or 6602: Other: Other." It is dutiable at the general column one rate at 5.2 percent *ad valorem*.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966354
June 18, 2003
CLA–2 RR:CR:TE 966354 RH
CATEGORY: Classification
TARIFF NO.: 6603.90.8000

MS. LAURIE J. SHOWERS
GROSSFILLEX, INC.
1575 Joel Drive
Lebanon, PA 17046–8376

RE: Proposed revocation of NY G83051, dated October 25, 2000; Classification of an umbrella base and ring made of cast iron; Parts and Accessories; Heading 7325; Heading 6603; Additional U.S. Rule of Interpretation 1(c), HTSUS

DEAR MS. SHOWERS:

On October 25, 2000, Customs (now Customs and Border Protection (CBP)) issued New York Ruling Letter (NY) G83051 to you concerning the classification of an umbrella base and ring composed of malleable cast iron. In that ruling, CBP classified the umbrella base and ring under subheading 7325.99.1000 of the Harmonized Tariff Schedule of the United States (HTSUS), as other articles of iron or steel.

For the reasons set forth below, we find that NY G83051 was incorrect and that the proper classification of the iron umbrella base ring is under subheading 6603.90.8000, HTSUS, as accessories to an umbrella.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY G83051 was published on April 30, 2003, in Vol. 37, No. 18 of the CUSTOMS BULLETIN. CBP received no comments.

FACTS:

A description of the merchandise in NY G83051 reads as follows:

> The merchandise is an umbrella base and ring, made of malleable cast iron. The articles are used to support an outdoor umbrella.

ISSUE:

Are the iron umbrella base and ring classified under heading 7325, HTSUS, as articles of iron or steel or under heading 6603, HTSUS, as "parts, trimmings and accessories" of umbrellas?

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI's taken in order.

Additionally, the Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System constitute the official interpretation of the nomenclature at the international level. The EN are not legally binding. However, they do represent the considered views of classification experts of the Harmonized System Committee. It has therefore been the practice of CBP to follow, whenever possible, the terms of the EN when interpreting the HTSUS.

Heading 7325, HTSUS, provides for "Other cast articles of iron or steel." Heading 6603, HTSUS, provides for "Parts, trimmings and accessories of articles of heading 6601 or 6602." Heading 6601 encompasses umbrellas and sun umbrellas.

Additional U.S. Rule of Interpretation 1(c), HTSUS, states that in the absence of special language or context which otherwise requires—

> (c) a provision for parts of an article covers products solely or principally used as a part of such articles but a provision for "parts" or "parts and accessories" shall not prevail over a specific provision for such part or accessory;

There is not a specific provision in the HTSUS for the umbrella base ring. Therefore, in accordance with Additional U.S. Rule of Interpretation 1(c), HTSUS, if the article is a part or accessory to an umbrella subheading 6603.90.8000, HTSUS, will prevail over subheading 7325.00.1000, HTSUS, which is a residual provision for other articles of iron.

The term "accessory" is not defined in either the tariff schedule or the Explanatory Notes. An accessory is generally an article that is not necessary to enable the goods with which it is used to fulfill their intended function. An accessory must be identifiable as being intended solely or principally for use with a specific article. Accessories are of secondary or subordinate importance, not essential in and of themselves. They must, however, somehow contribute to the effectiveness of the principal article (e.g., facilitate the use or handling of the principal article, widen the range of its uses, or improve its operation.) See Headquarters Ruling Letter (HQ) 087704, dated September 27, 1990.

On the other hand, it is a well-established rule that a part of an article is something necessary to the completion of that article. It is an integral, constituent or component part without which the article to which it is to be joined could not function as such article. *Clipper Belt Lacer Co., Inc. v. United States*, 14 CIT 146 (1990). The definition of "parts" was discussed recently in *Rollerblade, Inc. v. United States*, 283 F.3d 1349

(Fed. Cir. 2002). In that case, the court defined parts as "an essential element or constituent; integral portion which can be separated, replaced, etc." *Id.* at 1353 (citing *Webster's New World Dictionary* 984 (3d College Ed. 1988)). See HQ 966133, dated March 11, 2003.

Note 2 to Chapter 66, HTSUS, reads:

> Heading 6603 does not cover parts, trimmings or accessories of textile material, or covers, tassels, thongs, umbrella cases or the like, of any material. Such goods entered with, but not fitted to, articles of heading 6601 or 6602 are to be classified separately and are not to be treated as forming part of those articles.

In addition to the chapter note, the EN to heading 6603 provides guidance on the scope of heading 6603, HTSUS. The EN reads, in its entirety:

> This heading **excludes** parts, trimmings and accessories, of textile material, and covers, tassels, thongs, umbrella cases and the like of any material; these are classified separately even when presented with, but not fitted to, umbrellas, sun umbrellas, walking-sticks, etc. (see Note 2 to this Chapter). With these **exceptions**, the heading covers identifiable parts, fittings and accessories for articles of heading 66.01 or 66.02.

These remain classified here regardless of their constituent material (including precious metal or metal clad with precious metal or natural, synthetic or reconstructed precious or semi-precious stones). They include:

(1) Handles (including blanks identifiable as unfinished handles) and knobs for umbrellas, sun umbrellas, walking-sticks, whips, etc.
(2) Frames, including frames mounted on sticks, and ribs and stretchers for frames.
(3) Shafts (sticks), whether or not combined with handles or knobs, for umbrellas or sun umbrellas.
(4) Stocks for whips or riding-crops.
(5) Runners, rib tips, open cups and tip cups, ferrules, springs, collars, tilting devices for adjusting the top of the umbrella at an angle to the mast, spikes, ground plates for seat-sticks and the like, etc.

While the umbrella base and ring are not one of the exemplars listed in the EN, they are accessories to an umbrella. They aid in securing and holding the umbrella in place and clearly contribute to the effectiveness of the principal article.

Moreover, CBP's classification of umbrella bases of various materials as accessories under heading 6603, HTSUS is consistent with prior rulings. See NY 950999, dated April 24, 1990 (a polyethylene umbrella base classifiable under subheading 6603.90.0009, HTSUS), NY 818590, dated February 26, 1996 (umbrella stands made of metal with a cement, pebble or terrazzo base classifiable under subheading 6603.90.8000, HTSUS), and NY C82792, dated January 7, 1998) (cast iron umbrella base classifiable under 6603.90.8000, HTSUS).

Accordingly, we find that the umbrella base and ring are classifiable under subheading 6603.90.8000, HTSUS, as accessories to an umbrella.

HOLDING:

NY G83051 is REVOKED.

The iron umbrella base and ring are classifiable under subheading 6603.90.8000, HTSUS, which provides for "Parts, trimmings and accessories of articles of heading 6601 or 6602: Other: Other." They are dutiable at the general column one rate at 5.2 percent *ad valorem*.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Rulings Division.

19 CFR PART 177

REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF CYLINDRICAL AIR FILTERS

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of revocation of ruling letter and revocation of treatment relating to tariff classification of certain cylindrical air filters.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is revoking a ruling letter pertaining to the tariff classification of certain cylindrical air filters under the Harmonized Tariff Schedule of the United States ("HTSUS"), and is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed actions was published in the *Customs Bulletin* on April 23, 2003. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 9, 2003.

FOR FURTHER INFORMATION CONTACT: Joe Shankle, Penalties Branch, (202) 572–8824.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade com-

munity needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), a notice was published in the *Customs Bulletin* on April 30, 2003, proposing to revoke NY I84014, dated July 18, 2002, which involved the classification of certain cylindrical air filters. No comments were received in response to the notice.

As stated in the proposed notice, this revocation will cover any rulings on the subject merchandise which may exist but which have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the Harmonized Tariff Schedule. Any person involved in substantially identical transactions should have advised CBP during the comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY I84014 and any other ruling not specifically identified in order to reflect the proper classification of cylindrical air filters punches pursuant to the analysis set forth in HQ 966083, attached. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by the CBP to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin.*

DATED: June 19, 2003

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachment

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966083
June 19, 2003
CLA–2:RR:CR:TE 966083 JFS
CATEGORY: Classification
TARIFF NO.: 5911.90.0080

MR. SANJIV R. MALKAN
PRESIDENT AND CEO
SYNFIL TECHNOLOGIES
P.O. Box 31486
Knoxville, TN 37930–1486

Re: Request for Reconsideration of NY I86458; Revocation of NY I84014; Cylindrical Air Filters; Textile Articles for Technical Use; Heading 5911, HTSUSA.

DEAR MR. MALKAN:

This is in response to your request for reconsideration of New York Ruling Letter (NY) I86458, dated October 1, 2002, wherein Customs and Border Protection (CBP) classified flat panel air filters in heading 5911, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). In your request for reconsideration, you request that CBP classify the flat panel air filters consistent with CBP's ruling in NY I84014, dated July 18, 2002, wherein CBP classified cylindrical air filters in heading 8421, HTSUSA. CBP has considered both rulings. For the reasons that follow, this ruling revokes NY I84014.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–82, 107 Stat. 2057, 2186), notice of the proposed revocation of NY I84014, was published on April 23, 2003, in the *CUSTOMS* BULLETIN, Volume 37, Number 17. As explained in the notice, the period within which to submit comments on this proposal ended on May 23, 2003. No comments were received in response to this notice.

FACTS:

The sample considered in NY I84014, is a representative sample of a line of filters referred to as Synfil™ Synthetic HEPA™ Circular Air Filters. The filters are cylindrical in shape, are non-fiberglass and non-PTFE, and are used in household air purifiers. The internal filter medium is composed of extruded polypropylene filaments forming a non-woven material that is folded into a circular accordion shape. The filter medium is inserted into a circular plastic mesh housing and secured in place by means of rubber rings placed on each end of the housing. The sample measures approximately 10¾ inches in diameter.

In NY I84014, CBP classified the filters in subheading 8421.39.8015, HTSUSA, which provides for "Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof: Filtering or purifying machinery and apparatus for gases: Other: Other, Dust collection and air purification equipment: Other. The general column one rate of duty is Free.

ISSUE:

Whether the subject cylindrical air filters composed of a textile filter medium that is encased in a plastic mesh housing and has rubber rings on each end are classified in heading 5911, HTSUSA, as articles of textile for technical use?

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI's). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN's) represent the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. The EN's, although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUSA, and are generally indicative of the proper interpretation of these headings.

You assert that the subject merchandise is properly classified in heading 8421, HTSUSA, as a part of purifying or filtering machinery, rather than in heading 5911, HTSUSA, as other textile products for technical uses. Heading 8421, HTSUSA, specifically provides for "Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof."

Note 1(e) to Section XVI provides that the section does not cover "[t]ransmission or conveyor belts or belting of textile material (heading 5910) or other articles of textile material for technical uses (heading 5911)." The General EN to Chapter 84, page 1393, also excludes from classification in Chapter 84, articles of textile material for technical uses (heading 5911). The EN's to heading 8421, HTSUSA, further provide that textile filtering elements are to be classified according to their constituent material. The EN's further state that heading 8421 excludes textile articles such as those classifiable in heading 5910 or 5911. Therefore, the merchandise is excluded from heading 8421, HTSUSA.

Moreover, the ENs for heading 8421, HTSUSA, state, in pertinent part, that:

PARTS

> **Subject** to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), the heading covers parts for the above-mentioned types of filters and purifiers* * * *
>
> It should be noted, however, that filter blocks of paper pulp fall in **heading 48.12** and that many other filtering elements (ceramics, *textiles*, felts, etc.) *are classified according to their constituent material.* (Emphasis added).

In addition, the General EN to Section XVI, at page 1385, state:

> This section **does not**, however, cover * * * * (c) Textiles articles, e.g. transmission or conveyer belts **(heading 5910)**, felt pads and polishing discs **(heading 5911).**

Furthermore, Additional U.S. Rule of Interpretation 1(c), provides:

> In the absence of special language or context which otherwise requires a provision for parts of an article covers products solely or principally used as a part of such articles but a provision for "parts" or "parts and accessories" shall not prevail over a specific provision for such part or accessory.

CBP does not believe that the subject merchandise should be classified as a part of a filtering machine in heading 8421, HTSUSA. CBP notes that the parts provision of heading 8421, HTSUSA, is less specific than the heading for textile materials for technical purposes (discussed infra). Furthermore, CBP notes that the subject merchandise is imported separately from the filtering machinery. Even if considered a "part" of

the filtering machinery, the subject merchandise is excluded from this heading due to the textile composition from which it is constructed by operation of Note 1(e), which excludes textile materials for technical uses (heading 5911).

Heading 5911, HTSUSA, provides for textile products and articles for technical uses so long as they are specified in Note 7 to Chapter 59, HTSUSA. Note 7 to Chapter 59 reads:

> Heading 5911 applies to the following goods, which do not fall in any other heading of section XI:
>
> (a) Textile products in the piece, cut to length or simply cut to rectangular (including square) shape (other than those having the character of the products of headings 5908 to 5910), the following only:
>
> (i) Textile fabrics, felt and felt-lined woven fabrics, coated, covered or laminated with rubber, leather or other material, of a kind used for card clothing, and similar fabrics of a kind used for other technical purposes, including narrow fabrics made of velvet impregnated with rubber, for covering weaving spindles (weaving beams);
> (ii) Bolting cloth;
> (iii) Straining cloth of a kind used in oil presses or the like, of textile material or human hair;
> (iv) Flat woven textile fabrics with multiple warp or weft, whether or not felted, impregnated or coated, of a kind used in machinery or for other technical purposes;
> (v) Textile fabric reinforced with metal, of a kind used for technical purposes;
> (vi) Cords, braids and the like, whether or not coated, impregnated or reinforced with metal, of a kind used in industry as packing or lubricating materials;
>
> (b) Textile articles (other than those of headings 5908 to 5910) of a kind used for technical purposes (for example, textile fabrics and felts, endless or fitted with linking devices, of a kind used in papermaking or similar machines (for example, for pulp or asbestos-cement), gaskets, washers, polishing discs and other machinery parts).

The EN to heading 5911, HTSUSA, state that "textile products and articles of this heading present particular characteristics which identify them as being for use in various types of machinery, apparatus, equipment or instruments or as tools or parts of tools."

Furthermore, Section B to the EN's for heading 5911 specifically addresses textile articles of a kind used for technical purposes. The EN's state in pertinent part:

> All textile articles of a kind used for technical purposes (**other than** those of **headings 59.08 to 59.10**) are classified in this heading and **not** elsewhere in Section XI (see Note 7(b) to the Chapter); for example:
>
> (1) Any of the fabrics of (A) above which have been made up (cut to shape, assembled by sewing, etc.) for example straining cloths for oil presses made by assembly of several pieces of fabric; bolting cloth cut to shape and trimmed with tapes or furnished with metal eyelets or cloth mounted on a frame for use in screen printing.
>
> * * * * *
>
> (9) Bags for vacuum cleaners, filter bags for air filtration plant, oil filters for engines, etc.

The EN's further state that "the textile articles of this heading may incorporate accessories in other material **provided** the articles remain essentially articles of textile." The instant filters consist of the textile filter medium that is encased with plastic mesh housing and secured by rings at each end. It is the textile material, by filtering out the unwanted particles in the air, that serves as the unifying component of the filters. Accordingly, the plastic mesh housing and rubber rings do not preclude classification of the subject merchandise within heading 5911, HTSUSA.

In NY I86458, CBP classified a filter that was 16 inches square and approximately 1¾ inches thick. The filter medium was identical to the filter medium used in the instant cylindrical filter. The filter medium was housed in a cardboard frame. CBP classified the filter in subheading 5911, HTSUSA. Likewise, in Headquarters Ruling Letter (HQ) 965820, dated October 3, 2002, CBP classified filters designed to be used in domestic forced air heating and cooling systems in heading 5911, HTSUSA. The filters were described as follows:

> The subject merchandise is an air filter for use in domestic forced air furnaces. The filters are ready to use when purchased and are available in several standard sizes: 16 inches by 25 inches; 20 inches by 20 inches; and 20 inches by 25 inches. The filters consist of Filtrete™ filter medium, a metal mesh support and a cardboard frame. The Filtrete(tm) medium is described as a nonwoven filter cloth comprised of a nonwoven web of electrostatically charged polypropylene fibers weighing 20 to 70 grams per meter squared ("g/m^2").

CBP conducted the same analysis as above and concluded that the cardboard frame and metal mesh did not preclude the classification of the filters in heading 5911, HTSUSA.

The instant cylindrical filters are substantially similar to those filters considered in HQ 965820 and NY I86458. Although, the instant filters have a more substantial housing, the primary function of the filters is still carried out by the textile material. Accordingly, the addition of the non-textile materials is not substantial enough to keep them from being essentially articles of textile. For rulings classifying filters and filter media in heading 5911, HTSUSA, see HQ 954138, dated June 15, 1993; HQ 956909, dated January 31, 1995; HQ 955244, dated April 4, 1994; and NY 863512, dated June 11, 1991.

HOLDING:

NY I84014, dated July 18, 2002, is hereby revoked. The subject merchandise is classified in subheading 5911.90.0080, HTSUSA, which provides for "Textile products and articles, for technical uses, specified in note 7 to this chapter: Other: Other." The general column one duty rate is 4.2 percent *ad valorem*.

In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

Gail A. Hamill for MYLES HARMON,
Director,
Commercial Rulings Division.

19 CFR PART 177

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO CLASSIFICATION OF PAINT ROLLER FRAMES

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of proposed revocation of a ruling letter and treatment relating to tariff classification of paint roller frames.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested

parties that Customs intends to revoke a ruling letter pertaining to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of paint roller frames and to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before August 11, 2003.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, NW, Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Keith Rudich, General Classification Branch, (202) 572–8782.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. § 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of paint roller frames. Although in this notice Customs is specifically referring to one ruling, PD

C87444, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In PD C87444, dated May 29, 1998, set forth as "Attachment A" to this document, Customs found that paint roller frames were classified in subheading 8205.59.55, HTSUS, as iron or steel hand tools not elsewhere specified or included.

Customs has reviewed the matter and determined that the correct classification of paint roller frames is in subheading 7326.20.00, HTSUS, which provides for articles of iron or steel wire.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke PD C87444, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) 966118, as set forth in "Attachment B" to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: June 20, 2003

Gerard O'Brien, Jr. for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
PD C87444
May 29, 1998
CLA–2–82:H:TC:CI:C19 C87444 JM
CATEGORY: Classification
TARIFF NO.: 8205.59.5560

MR. TOM PACIAFFI
VICE PRESIDENT, CORONET BROKERS CORPORATION
JFK International Airport, Cargo Building 80
Jamaica, NY 11430–0764

RE: The tariff classification of a steel paint roller frame from China

DEAR MR. PACIAFFI:

In your letter dated May 1, 1998, you requested a tariff classification ruling on behalf of Zomax Industries.

The product to be imported is a 3" steel paint roller frame with a plastic handle. Its shank is constructed from heavy duty, quarter-inch wire and the hollow end is threaded to facilitate the use of an extension pole. The paint roller frame is sold by Ningbo Machinery and Equipment Import Export Corporation of Ningbo, China and is designated as Zomax item number 5794.

The applicable subheading for the steel paint roller frame will be 8205.59.5560 Harmonized Tariff Schedule of the United States (HTSUS), which provides for other iron or steel handtools not elsewhere specified or included.

The rate of duty will be 5.3 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported.

PAUL RIMMER
Port Director
Houston

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966118
CLA–2 RR:CR:GC 966118 KBR
CATEGORY: Classification
TARIFF NO.: 7326.20.00

MR. TOM PACIAFFI
VICE PRESIDENT, CORONET BROKERS CORPORATION
JFK International Airport, Cargo Building 80
Jamaica, NY 11430–0764

RE: Reconsideration of PD C87444; Steel Paint Roller Frame

DEAR MR. PACIAFFI:

This is in reference to a classification ruling issued to you on behalf of Zomax Industries by the Port Director, U.S. Customs Service, Houston, PD C87444, on May 29, 1998. That ruling concerned the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a steel paint roller frame. We have reviewed PD

C87444 and determined that the classification provided for the steel paint roller frame is incorrect.

FACTS:

PD C87444 concerned Zomax item number 5794, a 3 inch steel paint roller frame with a plastic handle. Its shank is constructed from heavy duty, quarter-inch wire. The hollow end of the plastic handle is threading to facilitate the use of an extension pole.

In PD C87444, it was determined that the steel paint roller frame was classifiable in subheading 8205.59.55, HTSUS, as other iron or steel handtools not elsewhere specified or included. We have reviewed that ruling and determined that the classification of the steel paint roller frame is incorrect. This ruling sets forth the correct classification.

ISSUE:

Is a steel paint roller frame properly classified under the HTSUS as a handtool or as an article of iron or steel?

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). Under GRI 1, merchandise is classifiable according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In interpreting the headings and subheadings, Customs looks to the Harmonized Commodity Description and Coding System Explanatory Notes (EN). Although not legally binding, they provide a commentary on the scope of each heading of the HTSUS. It is Customs practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. See T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

7326	Other articles of iron or steel:
7326.20.00	Articles of iron or steel wire
7326.90	Other:
	Other:
	Other:
7326.90.85	Other
8205	Handtools (including glass cutters) not elsewhere specified or included; blow torches and similar self-contained torches; vises, clamps and the like, other than accessories for and parts of machine tools; anvils; portable forges; hand- or pedal-operated grinding wheels with frameworks; base metal parts thereof:
	Other handtools (including glass cutters) and parts thereof:
8205.59	Other:
	Other:
	Other:
	Of iron or steel:
8205.59.55	Other:
8466	Parts and accessories suitable for use solely or principally with the machines of headings 8456 to 8465, including work or tool holders, self-opening dieheads, dividing heads and other special attachments for machine tools; tool holders for any type of tool for working in the hand:

8466.10 Tool holders and self-opening dieheads:

8466.10.80 Other

The article at issue is a 3 inch paint roller frame made from ¼ inch wire with a plastic handle. To be used, a consumer must purchase separately a paint roller cover. Once the cover is slipped over the wire end of the paint roller frame, it is dipped into paint (or similar substance) and rolled onto the surface to be treated. It is the cover that applies the paint to the surface.

Hand tools, included in heading 8205, HTSUS, are not defined in the HTSUS or ENs. Courts have defined hand tool as "any tool which is held and operated by the unaided hands; e.g., a chisel, plane or saw." *Western Oilfields Supply Co. v. United States*, 296 F. Supp. 330, 62 Cust. Ct. 182 (1969); *Hollywood Accessories, Division of Allen Electronics & Equipment Co. v. United States*, 282 F. Supp. 499, 60 Cust. Ct. 360 (1968); *F.B. Vandegrift & Co., Inc. v. United States*, 65 Cust. Ct. 260 (1970).

The Chapter Notes for Chapter 82 state that, with certain exceptions, "this chapter covers only articles with a blade, working edge, working surface or other working part of: (a) base metal * * * * " The court in *Continental Arms Corp.; Gehrig, Hoban & Co., Inc. v. United States*, 65 Cust. Ct. 80, 82 (1970), defined "working part" as:

> * * * "working part" of a hand tool is that part which performs work on an external object * * * *
>
> Some light is shed on the meaning of "working part" by the associated words, "blade, working edge, working surface," all of which perform work in relation to a workpiece.
>
> Additionally, we have considered the various tools provided for *eo nomine* in [the subpart], particularly the following hand tools* * * : Hammers, sledges, crowbars, track tools, wedges, drilling tools, threading tools, tapping tools, chisels, gimlets, gouges, planes, pencil sharpeners, lead and crayon pointers, and screwdrivers. The foregoing tools all do some form of work vis-à-vis an object external to the tool* * * *
>
> We therefore think that Congress used the term "working part" in the sense urged by defendant, viz., that part of the tool which does work in relation to a workpiece or object external to the tool.

In the instant case, the paint roller frame is not the "working part" as defined above. The textile paint roller cover is the component that actually deposits the paint onto the surface. EN 82.05 provides: "Tools containing metal but with working parts of rubber, leather, felt, etc. are classified according to the constituent materials* * * * " Since the "working part" is textile and not base metal, this would remove the article from chapter 82, and pursuant to the ENs, would be classified according to the component part, in this case steel wire.

Under the Tariff Schedules of the United States (TSUS), the predecessor of the HTSUS, Customs ruled that paint roller frames were classified as articles of iron or steel. HQ 074347 (September 28, 1984). This ruling found that the textile roller cover is the "part which imparts the paint roller with its most important characteristic, the ability to deposit paint onto a wall." The textile roller cover "is the most significant in the overall functioning of the item and therefore is strong support for the notion that the roller frame is merely a part and not a substantially complete paint roller." Customs has held that when the handle and cover are imported together, they are considered a "paint roller" and are specifically provided for in subheading 9603.40.20, HTSUS. NY J80036 (January 21, 2003), (stating that NY I82307 (November 29, 2002) included both the handle and cover although the case only described the cover). *See also* NY I80287 (April 8, 2002). NY J80036 held that when the handle and roller cover are imported separately, neither piece contained the essential character of the complete article. Therefore, the paint roller covers when imported separately were classifiable as textile articles in subheading 6307.90.98, HTSUS; and the handle when im-

ported separately was classified as articles of iron or steel wire in subheading 7326.20.00, HTSUS.

Pursuant to the ENs and court decisions, the paint roller frame is not a "working part" of a hand tool and should be classified according to its component parts, steel wire. Therefore, we find that the paint roller frame is classifiable under subheading 7326.20.00, HTSUS, as an article of iron or steel wire.

HOLDING:

The paint roller frame is classifiable under subheading 7326.20.00, HTSUS, as an article of iron or steel wire.

EFFECT ON OTHER RULINGS:

PD C87444 dated May 29, 1998, is revoked.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

19 C.F.R. PART 177

PROPOSED REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF AN ANALOG WRIST WATCH

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of proposed revocation of ruling letter and revocation of treatment relating to tariff classification of an analog wrist watch.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of an analog wrist watch, and to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before August 11, 2003.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to the Bureau of Customs and Border Protection, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at the Bureau of Customs and Border Protection, 799 9th Street, NW, Washington, D.C., during regular business hours. Arrangements to inspect submitted comments

should be made in advance by calling Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Keith Rudich, Commercial Rulings Division, (202) 572–8782.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. § 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of an analog wrist watch. Although in this notice Customs is specifically referring to one ruling, NY I88952, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third

party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY I88952, dated December 16, 2002, set forth as "Attachment A" to this document, Customs found, that an analog wrist watch was classified in subheading 9102.19.40, HTSUS, as: "Wrist watches, pocket watches and other watches, including stop watches, other than those of heading 9101: Wrist watches, electrically operated, whether or not incorporating a stop watch facility: Other: Having no jewels or only one jewel in the movement: Other."

Customs has reviewed the matter and determined that the correct classification of the analog wrist watch is in subheading 9102.11.45, HTSUS, which provides for: "Wrist watches, pocket watches and other watches, including stop watches, other than those of heading 9101: Wrist watches, electrically operated, whether or not incorporating a stop watch facility: With mechanical display only: Having no jewels or only one jewel in the movement: Other: Other."

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY I88952, as well as any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) 966206, as set forth in "Attachment B" to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: June 20, 2003

Attachments

Gerard J. O'Brien, Jr. for MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY I88952
December 16, 2002
CLA–2–91:RR:NC:MM:114 I88952
CATEGORY: Classification
TARIFF NO.: 9102.19.40

MS. CHRISTY MILLER
CUSTOMS SPECIALIST NIKE, INC.
One Bowerman Drive
Beaverton, OR 97005–6453

RE: The tariff classification of quartz analog wrist watch from Hong Kong

DEAR MS. MILLER:

In your letter dated November 19, 2002, you requested a tariff classification ruling on a quartz analog wrist watch from Hong Kong. A sample of the Presto Cee Analog was submitted with the ruling request.

Style WT0009, the Presto Cee Analog, is a women's battery operated quartz analog wrist watch in a plastic case. There are no jewels in the movement. The watch has a plastic watch band with ventilated wrist grips and is water resistant to 30 meters. The Presto Cee Analog features a white dial with silver tone hour, minute and second hands.

Your sample is being returned as requested. The applicable subheading for the wrist watch will be 9102.19.40, Harmonized Tariff Schedule of the United States (HTS), which provides for wrist watches, pocket watches and other watches, including stop watches, other than those of heading 9101; other; having no jewels or only one jewel in the movement; other. The rate of duty will be 32 cents each plus 4.8 percent ad valorem on the case plus 2.2 percent ad valorem on the strap, band or bracelet plus 4.2 percent ad valorem on the battery.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Barbara Kiefer at 646–733–3019.

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966206
CLA–2 RR:CR:GC 966206 KBR
CATEGORY: Classification
TARIFF NO.: 9102.11.45

MS. CHRISTY MILLER
CUSTOMS SPECIALIST
NIKE, INC.
One Bowerman Drive
Beaverton, OR 97005–6453

RE: NY I88952 Revoked; Analog Wrist Watch

DEAR MS. MILLER:

This is in reference to New York Ruling Letter (NY) I88952, issued to you on December 16, 2002, concerning Protest 3801–98–102222. This ruling concerned the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of the Presto Cee Analog wrist watch. We have reviewed NY I88952 and determined that the classification provided for the analog wrist watch is incorrect. This ruling sets forth the correct classification.

FACTS:

NY I88952 concerned Style WT0009, the Presto Cee Analog, a women's battery operated quartz analog wrist watch in a plastic case. There are no jewels in the movement. The watch has a plastic watch band with ventilated wrist grips and is water resistant to 30 meters. The analog wrist watch features a white dial with silver-tone hour, minute and second hands.

In NY I88952, it was determined that the analog wrist watch was classified in subheading 9102.19.40, HTSUS, as: "Wrist watches, pocket watches and other watches, including stop watches, other than those of heading 9101: Wrist watches, electrically operated, whether or not incorporating a stop watch facility: With mechanical display only: Having no jewels or only one jewel in the movement: Other: Other." We have reviewed that ruling and determined that the classification is incorrect. This ruling sets forth the correct classification.

ISSUE:

Whether the analog wrist watch is classified as "with mechanical display only" under subheading 9102.11, HTSUS.

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). Under GRI 1, merchandise is classifiable according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The HTSUS provisions under consideration are as follows:

9102	Wrist watches, pocket watches and other watches, including stop watches, other than those of heading 9101:
	Wrist watches, electrically operated, whether or not incorporating a stop watch facility:
9102.11	With mechanical display only:
	Having no jewels or only one jewel in the movement:
	Other:
9102.11.45	Other

9102.19 Other:

Having no jewels or only one jewel in the movement:

9102.19.40 Other

The article at issue is a battery powered, quartz analog wrist watch. To determine the time of day, the user looks at a traditional watch face - a dial with hands. This is in contrast to a digital watch where the time of day is displayed numerically, typically with a LCD or LED display.

The article's dial and hands display is called a "mechanical display." The HTSUS specifically provides for a watch which has only a mechanical display in subheading 9102.11, HTSUS. See HQ 086562 (June 12, 1990), NY H86759 (January 25, 2002), NY H80178 (May 9, 2001). The HTSUS treats a wrist watch with a mechanical display differently than a wrist watch with a digital display, the latter being classified in subheading 9102.19, HTSUS. See NY C88974 (July 7, 1998), NY C81810 (December 17, 1997).

Therefore, since the instant Presto Cee Analog wrist watch has a dial and hands display, it is classified as a wrist watch with a mechanical display only in subheading 9102.11.45, HTSUS.

HOLDING:

The Presto Cee Analog wrist watch is classified under subheading 9102.11.45, HTSUS, as: "Wrist watches, pocket watches and other watches, including stop watches, other than those of heading 9101: Wrist watches, electrically operated, whether or not incorporating a stop watch facility: With mechanical display only: Having no jewels or only one jewel in the movement: Other: Other."

EFFECT ON OTHER RULINGS:

NY I88952 dated December 16, 2002, is REVOKED.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE CLASSIFICATION OF 22-POCKET HANGING OVER-DOOR SHOE ORGANIZER

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: Notice of modification of a tariff classification ruling letter and revocation of any treatment relating to the classification of a 22-pocket hanging over-door shoe organizer.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP is modifying one ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a 22-pocket hanging over-door shoe organizer. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the

proposed modification and revocation of treatment was published in the *Customs Bulletin* on May 21, 2003, Vol. 37, No. 21. No comments were received.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after September 9, 2003.

FOR FURTHER INFORMATION CONTACT: Ann Segura Minardi, Textiles Branch, (202) 572–8822.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with CBP laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the CBP and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. section 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on May 21, 2003, Volume 37, Number 21, proposing to revoke one ruling letter, NY I884815, dated August 12, 2002, pertaining to the tariff classification of a 22-pocket hanging over-door shoe organizer under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). No comments were received in reply to the notice.

As stated in the proposed notice, this modification will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the HTSUSA. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical merchandise or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY I84815, CBP ruled that the subject goods were classifiable pursuant to a GRI 3(c) analysis within subheading 6307.90.9889, HTSUSA, which provides for other made up articles of textile. Since the issuance of that ruling, CBP has reviewed the classification of this item and has determined that the cited ruling is in error. We have determined that this item is a composite good consisting of different materials and should be classified pursuant to a GRI 3(b) analysis with the essential character of the article imparted by the plastic material. As such, we find that the article is properly classified in subheading 3924.90.5500, HTSUSA, which provides for other household articles of plastic.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY I84815, dated August 12, 2002, and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 965985 (Attachment). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions that are contrary to the determination set forth in this notice.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

DATED: June 24, 2003

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Rulings Division.

[Attachment]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 965985
CLA–2 RR:CR:TE 965985 ASM
June 24, 2003
CATEGORY: Classification
TARIFF NO.: 3924.90.5500

MR. FRANK PRACKLER
HAROLD I. PEPPER CO., INC.
181 South Franklin Ave., Suite 218
Valley Stream, NY 11581

RE: Reconsideration and Modification of NY I84815; Classification of 22-pocket hanging over-door shoe organizer

DEAR MR PRACKLER:

This is in response to a letter, dated September 19, 2002, which you submitted on behalf of EZ Do Co., requesting reconsideration of New York Ruling (NY) I84815, dated August 12, 2002, which classified among other things an over-door shoe organizer (item 46098) under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have reviewed this ruling and determined that the classification provided for this merchandise is incorrect. A sample was submitted to this office for examination.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057 (1993), a notice of proposed modification was published on May 21, 2003, in the *Customs Bulletin*, Volume 37, Number 21, proposing to modify NY I84815, dated August 12, 2002, and to revoke the tariff treatment pertaining to the tariff classification of a 22-pocket hanging over-door shoe organizer. No comments were received.

FACTS:

The subject article is identified as a 22-pocket hanging over-door shoe organizer, item 46098. The article is constructed of a non-woven fabric panel with 22 pockets on one side. The pockets are constructed of clear plastic material. The top is designed to allow for hanging the article over a door. The entire article measures 62.5 inches long x 23 inches wide. Five rows of four pockets each are formed by stitching clear plastic sheeting to the non-woven fabric. Narrow plastic strips are used as a binder for the stitches and as a capping for the edges. Each pocket is meant to hold a shoe. At the bottom there are two double-sized pockets to hold pocketbooks, scarves, or other items. There are four grommets at the top to enable the item to be hung. Four metal over-door hooks are included.

In NY I84815 the subject article was classified in subheading 6307.90.9889, HTSUSA, which is a provision for other made up textile articles. You disagree with this classification and claim that the correct classification is in subheading 3924.90.5500, HTSUSA, which provides for other household articles of plastic.

ISSUE:

What is the proper classification for the merchandise?

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The subject article, identified as item 46098, is constructed of both plastic and textile materials. As such, the article is *prima facie* classifiable as an article of plastic under heading 3924, HTSUSA, which provides for "Tableware, kitchenware, other household articles and toilet articles, of plastics" and as an article of textile under heading 6307, HTSUSA, which provides for "Other made up articles, including dress patterns". Thus, the goods are not classifiable pursuant to a GRI 1 analysis. GRI 2(b) provides that the classification of combinations of materials, which are *prima facie* classifiable under two or more headings, must be classified according to the principles of Rule 3. GRI 3(b) provides that composite goods consisting of different materials or made up of different components shall be classified as if they consisted of the material or component which gives them their essential character. The EN for GRI 3(b) states in relevant part that the factor which determines essential character will vary as between different kinds of goods, e.g., by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

In the case of *Better Home Plastics Corp. v. United States*, 199 F.3d 969 (1997), the Court of Appeals for the Federal Circuit (CAFC) affirmed a decision by the Court of International Trade (CIT) which classified a textile shower curtain/plastic liner set, pursuant to a GRI 3(b) analysis, as an article of plastic under subheading 3924.90.1010, HTSUSA. The CAFC further affirmed that the CIT had correctly applied a GRI 3(b) analysis by evaluating the essential character of a textile shower curtain/plastic liner set by comparing the relative importance of each component. Finally, in affirming that the CIT had correctly classified the set, the CAFC held that there was no error in the lower court's refusal to reject the essential character test in favor of the default rule of GRI 3(c).

In Customs Headquarters Ruling Letter (HQ) 964238, dated May 31, 2002, we applied a GRI 3(b) analysis in classifying suit/dress bags (items 01896–2; 01892–2) constructed of plastic and textile materials. In determining the essential character of these goods pursuant to a GRI 3(b) analysis, we compared the plastic and textile materials to assess which material contributed the greatest durability and value to the finished goods. In this instance, we found that the textile material provided the greater durability and value. Thus, the goods were classified as a container of heading 4202 with outer surface of textile under subheading 4202.92.3031, HTSUSA.

Upon visual examination of the article now in issue, it has been confirmed that there is more plastic sheeting than textile fabric used to construct the article. Although the textile panel forms the back of the pocket, it is the plastic sheeting that forms the gusseted front portion of the 22 pockets which will store, organize, and support the intended contents. In this way, the plastic front portion of the pockets defines the product as a shoe organizer. In addition, the entire article has been reinforced with plastic piping to provide strength and support to the plastic pockets and along the edges of the textile panel. The clear plastic sheeting provides easy identification of shoe style/color and an easy wipe surface, which is important in cleaning away dirt/mud carried by shoe soles to the interior of each plastic pocket. The plastic material on this article represents a higher percentage of the total value of the article than the textile panel. Thus, the plastic components of the shoe organizer provide the indispensable function and the greater quantity and value to the article.

In view of the foregoing, it is our determination that the subject article, item 46098, is correctly classified, pursuant to GRI 3(b), as an article of plastic under subheading 3924.90.5500, HTSUSA. It is also our decision that NY I84815, dated August 12, 2002, incorrectly classified the subject article (item 46098) as an other article of textile in subheading 6307.90.9889, HTSUSA.

HOLDING:

The subject merchandise, identified as Item 46098, is correctly classified in subheading 3924.90.5500, HTSUSA, which provides for, "Tableware, kitchenware, other household articles and toilet articles, of plastics: Other: Other." The general column one duty rate is 3.4 percent *ad valorem*.

EFFECT ON OTHER RULINGS

NY I84815, dated August 12, 2002, is MODIFIED. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Rulings Division.

United States Court of International Trade

One Federal Plaza
New York, NY 10278

Chief Judge

Gregory W. Carman

Judges

Jane A. Restani
Thomas J. Aquilino, Jr.
Donald C. Pogue
Evan J. Wallach
Judith M. Barzilay
Delissa A. Ridgway
Richard K. Eaton
Timothy C. Stanceu

Senior Judges

Nicholas Tsoucalas
R. Kenton Musgrave
Richard W. Goldberg

Clerk

Leo M. Gordon

Decisions of the United States Court of International Trade

(Slip Op. 03–66)

ELKEM METALS CO., AMERICAN ALLOYS, INC., APPLIED INDUSTRIAL MATERIALS CORP., AND CC METALS & ALLOYS, INC., PLAINTIFFS, AND GLOBE METALLURGICAL, INC., PLAINTIFF-INTERVENOR *v.* UNITED STATES OF AMERICA, DEFENDANT, AND FERROATLANTICA DE VENEZUELA, GENERAL MOTORS CORP., ASSOCIAÇÀO BRASILEIRA DOS PRODUCTORES DE FERROLIGAS E DE SILICO METALICO, ET AL., AND RONLY HOLDINGS, LTD., ET AL., DEFENDANT-INTERVENORS.

Consol. Court No. 99–10–00628

[United States International Trade Commission's determination on reconsideration, as modified by first remand determination, remanded for further proceedings in accordance with this opinion.]

Dated: June 18, 2003

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OPINION AND ORDER

EATON, *Judge*: Before the court are the motions of plaintiffs Elkem Metals Company ("Elkem"), American Alloys, Inc. ("American Alloys"),[1] Applied Industrial Materials Corporation ("AIMCOR"), and CC Metals & Alloys, Inc. ("CCMA"), and plaintiff-intervenor Globe Metallurgical, Inc. ("Globe") (collectively, "Plaintiffs"), for judgment upon the agency record pursuant to USCIT R. 56.2. Plaintiffs challenge the United States International Trade Commission's ("ITC") negative injury determination in Ferrosilicon From Braz., China, Kaz., Russ., Ukr., Ven., 64 Fed. Reg. 47,865 (ITC Sept. 1, 1999) (reconsideration determination). *See* Views of the Commission, Ferrosilicon From Braz., China, Kaz., Russ., Ukr., Ven., Invs. Nos. 303–TA–23, 731–TA–566–570, and 731–TA–641 (Reconsideration), USITC Pub. 3218 (Aug. 1999), Pub. R. List 1, Doc. 558AR ("Reconsideration Determination"). In *Elkem Metals Co. v. United States*, 26 CIT ___ , 193 F. Supp. 2d 1314 (2002) ("*Elkem IV*"), familiarity with which is presumed, this court remanded the Reconsideration Determination with respect to certain procedural issues.[2] The ITC's Reconsideration Determination, as modified on remand, is the subject of this action. The court has jurisdiction pursuant to 28 U.S.C. § 1581(c) and 19 U.S.C. § 1516a(a)(2)(B)(ii) (2000). For the reasons set forth below, the court remands this matter for further proceedings in accordance with this opinion.

BACKGROUND

In response to petitions filed on behalf of the domestic ferrosilicon industry in 1992 and 1993, the ITC instituted investigations of ferrosilicon from Brazil, Kazakhstan, the People's Republic of China ("China"), Russia, Ukraine, and Venezuela ("Subject Countries"). *See* Reconsideration Determination at 12. The ITC selected the years 1989 through 1993 as the period of investigation ("Original POI").[3]

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[1] American Alloys did not participate in the remand proceedings as it was in liquidation. *See* Views of the Commission, Ferrosilicon From Braz., China, Kaz., Russ., Ukr., Ven., Invs. Nos. 303–TA–23, 731–TA–566–570, and 731–TA–641 (Final) (Reconsideration) (Remand), USITC Pub. 3531 (Sept. 2002), Pub. R. List 1, Doc. 606R ("Remand Determination") at 4 n.15.

[2] Prior to *Elkem IV*, this court issued three opinions that addressed various procedural matters. *See Elkem Metals Co. v. United States*, 24 CIT 255 (2000) (ordering the ITC to submit certified copies of certain documents to the court for *in camera* review); *Elkem Metals Co. v. United States*, 24 CIT 1395, 126 F. Supp. 2d 567 (2000) (granting in part and denying in part Plaintiffs' motion to compel production of certain sealed items in the record); *Elkem Metals Co. v. United States*, 25 CIT ____ , 135 F. Supp. 2d 1324 (2001) (denying Plaintiffs' motion for preliminary injunction).

[3] This court has held that the ITC may, in its discretion, determine the period of investigation for its material injury analysis. *See Metallverken Nederland B.V. v. United States*, 13 CIT 1013, 1018, 728 F. Supp. 730, 735 (1989)

See id. During its investigations, the ITC collected data for those years by various means, including by issuance of questionnaires.

Between late 1989 and mid-1991 ("Conspiracy Period"), a conspiracy to fix prices of commodity ferrosilicon existed among three domestic ferrosilicon producers: (1) Elkem, (2) American Alloys, and (3) SKW Metals & Alloys, Inc. ("SKW")[4] (collectively, "Conspirators"). Reconsideration Determination at 10. The price-fixing conspiracy, however, was not brought to the ITC's attention during the Original POI. *Id.* at 11–12. Therefore, in 1993 and 1994, the ITC issued final affirmative injury determinations with respect to the Subject Countries. *See* Ferrosilicon From the P.R.C., 58 Fed. Reg. 13,503 (ITC Mar. 11, 1993) (final determination); Ferrosilicon From Kaz. and Ukr., 58 Fed. Reg. 16,847 (ITC Mar. 31, 1993) (final determination); Ferrosilicon From Russ. and Ven., 58 Fed. Reg. 34,064 (ITC June 23, 1993) (final determination); Ferrosilicon From Braz., 59 Fed. Reg. 10,165 (ITC Mar. 3, 1994) (final determination). In 1995, Elkem and American Alloys pled guilty to charges that they had conspired to fix prices of commodity ferrosilicon in violation of the Sherman Act, 15 U.S.C. § 1 (1990). *See* Pub. R. List 1, Doc. 325, Ex. 6 & 7 (plea agreements of Elkem and American Alloys). In 1997, a jury convicted SKW and a corporate officer of SKW, Mr. Charles Zak, of criminal charges related to the conspiracy. *See United States v. SKW Metals & Alloys, Inc.*, 4 F. Supp. 2d 166 (W.D.N.Y. 1997), *aff'd, remanded on other grounds*, 195 F.3d 83 (2d Cir. 1999).

The ITC learned of the conspiracy only in 1998 when the Brazilian respondents in the original investigation petitioned the ITC for a changed circumstances review of the final affirmative injury determination relating to ferrosilicon from Brazil. *See* Ferrosilicon From Braz., China, Kaz., Russ., Ukr., and Ven., 63 Fed. Reg. 27,747 (ITC May 20, 1998) (request for comments regarding institution of changed circumstances revs.). On July 28, 1998, the ITC instituted the requested changed circumstances review and, further, self-initiated changed circumstances reviews of the other related final affirmative material injury determinations—i.e., those pertaining to China, Kazakhstan, Russia, Ukraine, and Venezuela. *See* Ferrosilicon From Braz., China, Kaz., Russ., Ukr., Ven., 63 Fed. Reg. 40,314 (ITC July 28, 1998) (notice of institution of changed circumstances revs.). After receiving comments with respect to issues concerning the conspiracy, the ITC suspended these changed circumstances reviews and gave notice of its intention to initiate reconsideration proceedings. See Ferrosilicon From Braz., China, Kaz., Russ., Ukr., Ven., 64 Fed. Reg. 28,212 (ITC May 25, 1999) (notice of suspension of changed circumstances revs. and institution of reconsideration proceedings) ("Notice"). Subsequently, the ITC re-

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("The Commission has discretion to determine the appropriate periods of investigation.") (citations omitted). No dispute exists with respect to the duration of the Original POI or the propriety of the years selected.

[4] SKW is the predecessor firm of CCMA. *See* Remand Determination at 5.

versed and vacated its original affirmative injury determinations and issued a negative injury determination with respect to the original investigations. Reconsideration Determination at 1.

Thereafter, Plaintiffs brought this consolidated action alleging, among other things, that the ITC lacked the authority to conduct a reconsideration. In *Elkem IV*, this court held that, while the ITC was within its authority to reconsider its original final determinations, "it failed to adhere to the procedures that it published [in the Notice] as those that would govern its Reconsideration Proceedings," and, thus, that the reconsideration proceedings were not in accordance with law. *Elkem IV*, 26 CIT at ___ , 193 F. Supp. 2d at 1325. Accordingly, the court remanded the matter and ordered the ITC to conduct a hearing in conformity with the regulations referenced in the Notice, and afford the parties "all of the other benefits of the 'Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts, A, C, and D (19 CFR part 207)[ ]' Notice, 64 Fed. Reg. at 28,212, including adequate notice, prehearing briefing and post-hearing briefing." *Id.* (citing 19 C.F.R. §§ 207.20(b), 207.22, 207.23(a), 207.24 (1999)). The court further ordered:

> Finally, as to the ITC's contention that it need not examine whether the alleged price-fixing conspiracy actually distorted the domestic ferrosilicon prices at issue in the original investigations, should evidence with respect thereto be presented during the course of the further proceedings on remand, the ITC shall consider such evidence as it would consider any other evidence on the record.

Id. (citing 19 U.S.C. § 1677e (1988)). By its Remand Determination, the ITC affirmed its negative injury determination, which affirmance is now before the court.

STANDARD OF REVIEW

When reviewing a final determination in an antidumping or countervailing duty investigation, "[t]he court shall hold unlawful any determination, finding, or conclusion found * * * to be unsupported by substantial evidence on the record, or otherwise not in accordance with law* * * * " 19 U.S.C. § 1516a(b)(1)(B)(i); *see also Bethlehem Steel Corp. v. United States*, 26 CIT ___ , ___ , 223 F. Supp. 2d 1372, 1375 (2002) ("The same standard of review applies to the review of a remand determination as to the review of the original determination." (citations omitted)). "As long as the agency's methodology and procedures are reasonable means of effectuating the statutory purpose, and there is substantial evidence in the record supporting the agency's conclusions, the court will not impose its own views as to the sufficiency of the agency's investigation or question the agency's methodology." *Ceramica Regiomontana, S.A. v.*

United States, 10 CIT 399, 404–05, 636 F. Supp. 961, 966 (1986), *aff'd*, 810 F.2d 1137 (Fed. Cir. 1987) (citations omitted).

In conducting its review of the ITC's factual findings, "[t]he Court's function is not to reweigh the evidence but rather to ascertain whether there exists 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.' " *Chefline Corp. v. United States*, 26 CIT ___, ___, 219 F. Supp. 2d 1303, 1305 (2002) (quoting *Consol. Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)); *see also Ceramica Regiomontana, S.A. v. United States*, 810 F.2d 1137, 1139 (Fed. Cir. 1987) ("A court may 'uphold [an agency's] decision of less than ideal clarity if the agency's path may reasonably be discerned.' " (bracketing in original) (internal quotation and citation omitted)). "[T]he possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Consolo v. Fed. Mar. Comm'n*, 383 U.S. 607, 620 (1966) (citations omitted).

DISCUSSION

As an initial matter, no party seriously disputes that the ITC complied with this court's instructions in *Elkem IV* with respect to the procedures used in conducting its subsequent proceedings.[5] Plaintiffs do contend, however, that the negative determination reached by the ITC on reconsideration, and affirmed on remand, is neither supported by substantial evidence nor in accordance with law.

I. *Best Information Available*[6]

A. *The ITC's finding that the Conspirators' failure to reveal the existence of the price-fixing conspiracy "significantly impeded" the ITC's original investigations and thus justified the use of best information available is in accordance with law*

On reconsideration, the ITC found that, by failing to reveal the existence of an agreement to create a floor price for domestic fer-

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[5] CCMA alleges that the remand proceedings were conducted in a manner that violated its procedural due process rights because of certain alleged defects in the notice provided in Ferrosilicon From Braz., China, Kaz., Russ., Ukr., Ven., 67 Fed. Reg. 18,633 (ITC Apr. 16, 2002) (notice of institution and scheduling of remand proceedings). CCMA argues that the cases cited by this court in *Elkem IV* as authority for the ITC's power to reconsider its original determinations "all stand for the proposition that allegations of misconduct serious enough to warrant reconsideration are also serious enough to trigger constitutional due process protections for the parties charged with wrongdoing," which, CCMA alleges, include specific notice of the charges against it and an opportunity to cross-examine adverse witnesses. *See* Pub. Comments of CCMA on ITC's Remand Determinations ("CCMA Comments") at 28. CCMA cites, as an example, *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944), which this court quoted in its discussion of *Alberta Gas Chemicals, Ltd. v. Celanese Corp.*, 650 F.2d 9 (2d Cir. 1981), a case relied upon as support for the proposition that federal agencies have the authority to reconsider their final determinations. *Elkem IV*, 26 CIT at ____, 193 F. Supp. 2d at 1321 n.6. CCMA does not contend that it did not receive notice that issues related to its alleged misconduct in the original investigations would be addressed, nor does it contend it was not afforded an opportunity to be heard on these issues. "It is well settled that procedural due process guarantees do not require full-blown, trial type proceedings in all administrative determinations." *PPG Indus., Inc. v. United States*, 13 CIT 183, 189, 708 F. Supp. 1327, 1332 (1989) (citing *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976)). As such, and because ITC complied with this court's instructions on remand, the conduct of those proceedings is sustained.

[6] As the petitions in the original investigations were filed before January 1, 1995, the amendments made by the Uruguay Round Agreements Act ("URAA") were not applicable to the original determinations. *See Torrington Co. v. United States*, 68 F.3d 1347, 1352 (Fed. Cir. 1995). Thus, on reconsideration the pre-URAA version of 19 U.S.C. § 1677e(c) continued to apply.

rosilicon, i.e., the price-fixing conspiracy, during the original investigations, certain domestic producers had made misrepresentations and omitted information that "affected central issues in the original investigations pertaining to the relevant conditions of competition in the domestic industry, pricing of the like product, and factors that affected pricing of the like product." Reconsideration Determination at 20.[7] The Reconsideration Determination sets out these misrepresentations and omissions. *See id.* at 13–19. For example, one questionnaire asked the domestic producers to " 'describe the quoting process for [their] contracts or agreements for ferrosilicon,' " and to " '[i]nclude factors considered in determining [their] initial quotes and explain any trends in [their] quotes during the period January 1989—March 1992* * * * ' " *Id.* at 17 & n.51 (quoting June 1992 ITC Producers' Questionnaire, Question V.C.1); *see, e.g.*, Non-Pub. R. List 2, Doc. 9 at 38. Another questionnaire asked the following question: " 'To avoid losing sales to competitors selling ferrosilicon imported from (the subject countries) during any of the (POI) did your firm—[r]educe prices * * * or [r]oll back announced price increases?' " *Id.* at 18 & n.52 (quoting Question V–E; Question V–C); *see, e.g.*, Non-Pub. R. List 2, Doc. 7 at 45. In their responses, the Conspirators did not reveal the existence of an agreement to create a floor price, but rather indicated that prices were set by market forces. Reconsideration Determination at 11–12; *id.* at 3 ("U.S. producers that participated in the investigations actively advocated that the U.S. ferrosilicon market was driven by unfettered price competition."). In this way, the ITC found that "the producers concealed, if not manipulated, a competitive issue relevant to the Commission's evaluation of the meaning and significance of the observed market data." *Id.* at 19. Thus, the ITC concluded that "[b]y such conduct, these producers significantly impeded, undermined, and compromised the integrity of the Commission's investigations" and invoked its authority to use "best information otherwise available" ("BIA"), pursuant to 19 U.S.C. § 1677e(c) (1988). *Id.* at 21.

The statute governing the ITC's reconsideration authorized the ITC, under certain circumstances, to use BIA:

> In making [its] determinations under this subtitle, * * * the Commission shall, whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly im-

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[7] In the Reconsideration Determination, the ITC found that Elkem, American Alloys, SKW, AIMCOR, and Globe engaged in serious misconduct that called into question the veracity and reliability of the pricing information contained in the petitions, testimony, and questionnaire responses submitted on behalf of the domestic industry in the original investigations. *See* Reconsideration Determination at 9–10, 23. In the Remand Determination, the ITC adopted "all findings [it] made in the [Reconsideration Determination] with respect to party misconduct, except for findings pertaining to AIMCOR and Globe," Remand Determination at 6, which companies it determined "were not culpable of material misrepresentations or omissions during the original [ITC] investigations* * * * " *Id.* at 10. No party disputes the ITC's finding exonerating AIMCOR and Globe; thus, it is sustained. The court cannot agree with CCMA's contention, however, that the ITC's finding that CCMA engaged in misconduct is not supported by substantial record evidence, *see* CCMA Comments at 20, in light of the discussion *infra* that it "significantly impeded" the ITC's investigation.

> pedes an investigation, use the best information otherwise available.

19 U.S.C. § 1677e(c). It has been held that the use of BIA may be warranted where "answers to questions do not fully or accurately supply the information requested," *Olympic Adhesives, Inc. v. United States*, 899 F.2d 1565, 1572 (Fed. Cir. 1990),[8] or where a party refuses to timely produce requested information and thereby significantly impedes the investigation. *See Mitsubishi Heavy Indus., Ltd. v. United States*, 17 CIT 1024, 1031–32, 833 F. Supp. 919, 926 (1993); *Chung Ling Co. v. United States*, 16 CIT 843, 847, 805 F. Supp. 56, 62 (1992) ("*Chung Ling II*") (applying 19 U.S.C. § 1677e(b) (1982) and citing *Atl. Sugar, Ltd. v. United States*, 744 F.2d 1556, 1560 (Fed. Cir. 1984)) ("There can be no question that the Commission is allowed to—indeed *must*—use BIA 'under the circumstances enumerated in the statute.'" (emphasis in original)); *Ceramica Regiomontana*, 10 CIT at 406, 636 F. Supp. at 967 (sustaining use of BIA, pursuant to 19 U.S.C. § 1677e(b) (1982), in countervailing duty investigation where questionnaire responses found to be "inaccurate in significant and material respects"). "The court's role is not to determine whether the information chosen was the 'best' actually available," but rather whether the agency's choice is supported by substantial evidence and in accordance with law. *Manifattura Emmepi S.p.A. v. United States*, 16 CIT 619, 623, 799 F. Supp. 110, 114 (1992) (citations omitted); *see also Asociacion Colombiana de Exportadores de Flores v. United States*, 23 CIT 148, 158, 40 F. Supp. 2d 466, 476 (1999) (noting agency's "broad discretion in determining what information to use once it establishes that the application of BIA is appropriate." (citations omitted)). As the Court of Appeals for the Federal Circuit has stated:

> Noncooperation by parties or other persons may * * * be penalized, at least in the eyes of those parties or persons, by the ITC's mandatory use of whatever other best information it may have available. In short, one may view the best information rule * * * as an investigative tool, which that agency may wield as an informal club over recalcitrant parties or persons whose failure to cooperate may work against their best interest.

Atl. Sugar, 744 F.2d at 1560. An agency's authority to use BIA, however, is not unlimited. *See Olympic Adhesives*, 899 F.2d at 1572 (quoting *Atl. Sugar*, 744 F.2d at 1560) ("[T]he ITA has not been given power that can be 'wielded' arbitrarily as an 'informal club.'"); *Novachem, Inc. v. United States*, 16 CIT 782, 785, 797 F. Supp. 1033, 1036 (1992) (citing *Olympic Adhesives*, 899 F.2d at 1574) ("[T]he best

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[8] The *Olympic Adhesives* court applied 19 U.S.C. § 1677e(b) (1982), which was redesignated as 19 U.S.C. § 1677e(c) in 1988, upon enactment of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100–418 § 1331(1) (codified as amended at 19 U.S.C. § 1677e).

information available statute requires noncompliance with an information request before [the agency] may resort to the best information available."); *see also Manifattura Emmepi*, 16 CIT at 624, 799 F. Supp. at 115 ("[An agency's] authority to select best information otherwise available is subject to a rational relationship between data chosen and the matter to which they are to apply.").

There is little doubt that the use of BIA was warranted under the circumstances presented here. No credible argument can be made that the ITC questionnaires were answered truthfully and responsively. It is uncontested that the questionnaires distributed to the domestic producers requested information pertaining to the way in which domestic prices for ferrosilicon were determined.[9] None of the Conspirators revealed the agreement to create a floor price in their questionnaire responses. Rather, "the Commission was told repeatedly that prices in the ferrosilicon market were established solely on the basis of marketplace competition." Remand Determination at 5. In light of the importance of the price effects element of the ITC's material injury analysis in the original investigations and "the price-sensitive nature of competition among ferrosilicon suppliers" the ITC found to exist in the original investigations, *see* Reconsideration Determination at 28 (internal quotation omitted), the ITC reasonably concluded that the failure of the Conspirators to divulge the existence of the price-fixing conspiracy "significantly impeded" its investigation within the meaning of 19 U.S.C. § 1677e(c). *See Chung Ling II*, 16 CIT at 847, 805 F. Supp. at 62; *Olympic Adhesives, Inc.*, 899 F.2d at 1572 (resort to BIA justified where "answers to questions do not fully or accurately supply the information requested* * * * * "). Indeed, it is difficult to think of a situation where the use of the "informal club," *Atl. Sugar*, 744 F.2d at 1560, of BIA might be more warranted. Thus, the court finds that the ITC properly exercised its authority to use BIA, pursuant to 19 U.S.C. § 1677e(c).

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[9] Indeed, Elkem, through its counsel, conceded the questionnaire responses were deficient:

> [Elkem] * * * [doesn't] contest * * * that the fact of the antitrust violations should have been disclosed to this Commission in its original decision. We think that the Commission should have been given an opportunity to address all of the issues we talked about today back then.

Remand Tr., Pub. R. List 1, Doc. 578R at 49:22–25, 50:1–2 (Mr. John W. Nields, Jr.). At oral argument, the following exchange occurred between the court and counsel for Elkem:

> Court: [I]s it, in fact, the case that during the course of the initial investigation * * * representations were made that the prices were determined by market forces?
>
> Mr. Nields: I believe representations generally of that nature were made.

Oral Argument Tr. at 20:6–11. Counsel for CCMA, however, made the remarkable argument that his client answered the questionnaires truthfully:

> [O]ur view is we didn't omit anything. We told it like we saw it. There was competition in the marketplace. I don't think anybody listening to the record in this case could come away believing that there was not strong competition, at least between the imports and the domestics, and also among the domestics.

Id. at 60:4–10 (Mr. Stephen L. Gibson). Counsel for CCMA stated his client's position as follows: "Our position is that whatever meetings there were did not rise to the level of a pricefixing conspiracy, and that the thing was doomed to failure." *Id.* at 58:16–18. The court finds CCMA's position difficult to credit. CCMA's predecessor, SKW, was, in fact, a member of the price-fixing conspiracy and was convicted of conspiring to fix prices. It is undisputed that SKW did not disclose the conspiracy to the ITC. At the time SKW answered the questionnaire it was engaged in a conspiracy the purpose of which was to distort competition in the sale of its product. That the conspiracy may not have worked precisely as planned does not make CCMA's answers truthful.

B. *The ITC's findings, using best information available, are supported by substantial evidence on the record*

The question remains whether the ITC's findings, reached through the use of BIA, are supported by substantial evidence. Because of the failure to disclose the price-fixing conspiracy, the ITC determined that it could not rely on the pricing information submitted by the domestic producers, and, thus used "facts otherwise available" in making the following findings.[10] *See* Reconsideration Determination at 31. First, the ITC found that "[f]errosilicon prices reached a peak in 1989 when demand was exceptionally high." *Id.* Second, it found "[d]emand declined significantly from 1990 to 1991 due to a recession that reduced demand for the products in which ferrosilicon was used as an input; consequently, prices fell as well, although only to historically average levels." *Id.* The ITC thus concluded that these facts "indicate[d] that a reason for the price depression was the business cycle for ferrosilicon," rather than underselling by subject imports. *Id.*

In the Remand Determination the ITC affirmed these findings, observing that "declines in ferrosilicon prices from 1989 to 1991 largely parallel changes in demand" and that "in 1992, when demand increased somewhat, there were also price increases for some domestically produced ferrosilicon products." Remand Determination at 26. The ITC supplemented this demand analysis with an examination of U.S. apparent consumption, which has two components: imports and U.S. producers' shipments. *See* Rebuttal Comments of ITC Supp. Remand Determination ("Rebuttal Comments") at 29 n.13. It determined that consumption "declined by 5.1 percent from 1989 to 1990 and by 12.4 percent from 1990 to 1991," and that despite increases in consumption between 1991 and 1992 the evidence showed that "the 1992 apparent consumption quantity was still below that of 1989 or 1990." *Id.* at 25–26. The ITC continued:

> In instances of falling demand, we would generally expect prices to decline. This is particularly true in light of the difficulty in modulating ferrosilicon production to reflect changes in demand. Ferrosilicon is produced in furnaces that must be continuously run and cannot be easily and quickly be switched to or from production of other products.

Id. at 26. To substantiate its conclusions the ITC cited: (1) Economic Memorandum EC–Q–025 (Mar. 9, 1993), Non-Pub. R. List 2, Doc. 755R ("Economic Memorandum"); (2) the staff report prepared in connection with the ITC's final determination in Ferrosilicon From the P.R.C., Inv. No. 731–TA–567 (Final), USITC Pub. 2606 (Mar. 1993), Pub. R. List 1, Doc. 374 ("China Staff Report"); and (3) data

[10] While the ITC used the more modern term "facts otherwise available" in the Reconsideration Determination, it undoubtably meant BIA.

contained in the staff report prepared on remand. *See* Staff Report, Ferrosilicon From Braz., China, Kaz., Russ., Ukr., Ven., Invs. Nos. 303–TA–23, 731–TA–566–570, and 731–TA–641 (Final) (Reconsideration) (Remand), Non-Pub. R. List 2, Doc. 797R ("Remand Staff Report").

Elkem challenges the ITC's analysis of demand trends, in particular taking issue with the ITC's calculation of U.S. apparent consumption figures on remand. Elkem asserts that the ITC "reworked its old data" to show "a *decline* in consumption from 1989 to 1990 * * * by including categories of apparent consumption in the 1989 apparent consumption number that were not included in the apparent consumption numbers for 1990 through 1992." Pub. Comments of Elkem on ITC Remand Determination ("Elkem Comments") at 13 (emphasis in original). In doing so, Elkem alleges, the ITC increased the 1989 number and created the "misleading impression that demand declined from 1989 to 1990 when in fact it increased." *Id.* Elkem also argues that the 1989 U.S. apparent consumption figure includes U.S. shipment volumes for ten U.S. producers, while the apparent consumption figures for 1990, 1991, and 1992 include only seven U.S. producers' shipment volumes. *Id.* at 14.

The ITC responds to these arguments as follows. First, it asserts that the data Elkem contends more accurately reflect U.S. apparent consumption during the 1989 to 1991 period, in fact, confirm the ITC's finding that "there was a sharp decline in U.S. apparent consumption" during that period. Rebuttal Comments at 28 (citing Elkem Comments, Non-Pub. Ex. E). Second, the ITC asserts that Elkem did not raise any concerns about the accuracy of the 1990 and 1991 apparent consumption data on remand, even though such data were made available to Elkem and were subject to comment. *Id.* at 28–29. Finally, the ITC explains that, in any event, it used data from the February 1993 staff report to calculate 1989 U.S. apparent consumption because the October 1993 staff report, from which the data for 1990, 1991, and 1992 were taken, did not contain data for 1989.[11] *Id.* at 29 n.13. The ITC does not dispute that the February 1993 and October 1993 Staff Reports calculate import volume based on different data—the February report used questionnaire data collected from Plaintiffs in calculating import volume, and the October report used official import statistics. *Id.* The ITC contends that the 1989

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[11] The February 1993 staff report was prepared in connection with the final investigation concerning ferrosilicon from China, which data were incorporated into the final staff report in Ferrosilicon From Braz., Egypt, Kaz., P.R.C., Russ., Ukr., and Ven., Invs. Nos. 303–TA–23 (Final), 731–TA–566–570 (Final), and 731–TA–641–642 (Prelim.) (Feb. 17, 1993), Non-Pub. R. List 2, Doc. 774R ("February 1993 Staff Report"). *See* Remand Staff Report at II–2 n.6. The October 1993 staff report related to the final investigation of ferrosilicon from Brazil and Egypt. *See* Staff Report, Ferrosilicon From Braz. and Egypt, 731–TA–641–642 (Final) (Oct. 7, 1993), Non-Pub. R. List 2, Doc. 769R ("October 1993 Staff Report").

data were properly recalculated using these official import statistics. In addition, the ITC explains that it used shipment data for three U.S. producers in 1989 that it did not use for subsequent years because those producers ceased production in 1989. *Id.* (citing October 1993 Staff Report at 27 n.53).

The court finds that the ITC's BIA record evidence reasonably supports its findings with respect to pricing. Data compiled from domestic producers' questionnaire responses in the original investigation of ferrosilicon from China revealed that the domestic industry experienced a decline in demand from 1989 to 1991. As summarized in the China Staff Report:

> The demand for ferrosilicon is directly tied to the steel and foundry industries. Although the United States is the third largest steel producer in the world, weak demand from the construction, automotive, and appliance sectors contributed to a decline in steel output from 1989 to 1991. The steel industry had experienced high growth in 1988, but production decreased in 1989 as the rate of general economic growth slowed.

China Staff Report at I–13; Remand Determination at 25 & n.80. Moreover, as would be expected in an environment of declining demand and more or less consistent supply, the data show that from 1989 to 1991, prices for ferrosilicon fluctuated and generally decreased. As summarized in the Remand Staff Report:

> Quarterly prices of the domestic and applicable subject imported ferrosilicon fluctuated but generally fell from period highs during the first half of 1989 through much of the remaining period, before generally showing a tendency to turn up somewhat during April-September 1992* * * * Weakened U.S. iron and steel production in 1990 and a decline in 1991 led to weakened and then reduced U.S. demand for ferrosilicon, which, in turn, likely contributed to further declines in U.S. ferrosilicon prices during 1990 and 1991.

Remand Staff Report at III–7, –22. In addition, the record evidence confirms that the domestic industry experienced an overall decline in apparent consumption. The China Staff Report summarized the data on apparent consumption as follows:

> Total U.S. consumption, by quantity, decreased by 13.0 percent from 1989 to 1991, but increased 25.7 percent between the interim periods. In terms of value, total reported U.S. consumption fell by 31.9 percent from 1989 to 1991, but rose by 11.5 percent from January-September 1991 to January-September 1992* * * * [A]pparent consumption (by quantity) decreased 12.1 percent from 1989 to 1991, but rose 10.8 percent between the interim periods.

China Staff Report at I–13 & tbl. 1 (compiled from questionnaire responses and official statistics of the United States Department of Commerce). The court has also reviewed the confidential Economic Memorandum and finds that it supports the notion that it is difficult to switch from ferrosilicon production to production of other products or vice versa. *See* Economic Memorandum at 23. Thus, the court finds that the requisite "rational relationship between data chosen and the matter to which they are to apply" exists. *See Manifattura Emmepi*, 16 CIT at 624, 799 F. Supp. at 115.

In addition, the court finds Elkem's attempts to undermine the ITC's calculation of apparent consumption for 1989 unavailing. While Elkem alleges that the ITC improperly included categories of apparent consumption in its computation of the 1989 figure, both the ITC's data and Elkem's proposed "corrected" data indicate a general decline in U.S. apparent consumption from 1989 to 1991. *See* Elkem Comments, Non-Pub. Ex. E. The ITC reasonably relied on the February 1993 Staff Report for 1989 data as the October 1993 Staff Report did not include data for 1989. Finally, it was reasonable for the ITC to use official import statistics for 1989 in computing U.S. apparent consumption for that year, where such statistical information was also relied upon in calculating U.S. apparent consumption for subsequent years. Using this data is surely within the ITC's discretion considering the ITC's justified use of BIA. While the ITC acknowledges that "[t]he 1989 data presented in [the February 1993 Staff Report] differ marginally" from data contained in its Remand Staff Report, the difference is not sufficiently great to find the conclusions unsupported by substantial evidence. *See* Remand Staff Report at II–2 n.6; *Chefline Corp.*, 26 CIT at ____, 219 F. Supp. 2d at 1305. While Elkem offers different interpretations of the evidence than those made by the ITC, "the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Consolo*, 383 U.S. at 620 (citations omitted). Thus, the ITC's use of BIA is lawful and its findings based thereon are supported by substantial evidence on the record.

II. *Adverse Inferences*

A. *The ITC's authority to make adverse inferences under pre-URAA law*

Under the relevant pre-URAA regulation, the ITC had the authority to make adverse inferences, where warranted: "[W]henever a party * * * refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation, the Commission may use the best information otherwise available in making its determination; * * * [and] make inferences adverse to such person's position* * * * " 19 C.F.R.

§ 207.8 (1992), (1993)[12]; *Chung Ling Co. v. United States*, 16 CIT 636, 640, 805 F. Supp. 45, 49 (1992) ("*Chung Ling I*") (noting that "lack of cooperation in responding to the questionnaires is a sound basis for drawing an adverse inference against the domestic industry."). In *Alberta Pork Producers' Marketing Board v. United States*, 11 CIT 563, 669 F. Supp. 445 (1987), the court held that "the Commission has discretion in deciding whether or not to draw an adverse inference with respect to injury based upon a party's failure to participate in the administrative proceeding, but the decision in either event must be based upon a sound rationale." *Alberta Pork*, 11 CIT at 580, 669 F. Supp. at 459. The adverse inference rule was summarized as follows: " '[W]hen a party has relevant evidence within his control which he fails to produce, that failure gives rise to an inference that the evidence is unfavorable to [that party].' " *Id.* (quoting *Int'l Union (UAW) v. NLRB*, 459 F.2d 1329, 1336 (D.C. Cir. 1972)). In *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990), the Court of Appeals for the Federal Circuit found that the presumption that "the highest prior margin was the best information of current margins" was a permissible interpretation of 19 U.S.C. § 1677e(c). *Rhone Poulenc*, 899 F.2d at 1190. In upholding this presumption, the court cited the rationale underlying the adverse inference rule, i.e., that the presumption "reflects a common sense inference that the highest prior margin is the most probative evidence of *current* margins because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less." *Id.* (emphasis in original).

B. *The adverse inference that the price-fixing conspiracy affected prices during the Conspiracy Period is in accordance with law and supported by substantial evidence*

As with BIA, here, the determinative factor in deciding if the ITC was justified in making an adverse inference with respect to the effect of the price-fixing conspiracy is whether the Conspirators significantly impeded the investigation. *See* 19 C.F.R. § 207.8. Thus, in keeping with its finding with respect to BIA that the Conspirators significantly impeded its investigation by withholding information essential to its material injury analysis, the ITC made the adverse inference that "the underselling and lost sales were a function of the domestic industry's own actions—namely attempts to establish minimum prices." Reconsideration Determination at 31. In other words, on reconsideration the ITC made the adverse inference that the price-fixing conspiracy affected domestic prices while the conspiracy was in effect.

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[12] The court notes that 19 C.F.R. § 207.8 (1992) and 19 C.F.R. § 207.8 (1993), the regulations in force at the time the ITC made its final determinations with respect to ferrosilicon imports from the Subject Countries, contain identical language.

On remand, the ITC affirmed its finding that the conspiracy affected prices during the Conspiracy Period. In doing so, however, the ITC did not rely on adverse inferences alone. Rather, in support of this finding, the ITC cited data contained in the Remand Staff Report with respect to the frequency of underselling before, during, and after the Conspiracy Period. *See* Remand Determination at 18 & nn.57–58 (citing Remand Staff Report tbls. III–1–6, –7a–c, –8a–c, –9a–b). Analyzing these data, the ITC found that for the Conspirators the frequency of underselling was "significantly higher during the conspiracy period than during the preceding or following period," *id.* at 18:

> For the three conspirators, the frequency of underselling based on delivered prices was 80 percent (24 of 30 comparisons) during the conspiracy period (the fourth quarter of 1989 through the second quarter of 1991) and 61.8 percent (21 of 34 comparisons) during the non-conspiracy period* * * * We emphasize that this analysis is not an underselling analysis conducted pursuant to 19 U.S.C. § 1677(7)(C)(ii)(II) (1988). Instead, our purpose is to examine all available data in the record as to whether the price fixing conspiracy actually affected prices for domestically produced ferrosilicon, in response to the CIT opinion directing these remand proceedings.

Id. 18 n.57 (citing Remand Staff Report tbls. III–1–6, –7a–c, –8a–c, –9a–b). The ITC found that the higher incidence of underselling during the Conspiracy Period was "consistent with the theory that the conspiracy would tend to inflate the conspirators' prices as compared to the fair price that would have otherwise been established in the U.S. market during the time of the conspiracy." *Id.* at 18.

In accordance with the court's instruction in *Elkem IV*, on remand, the ITC also considered evidence submitted by Elkem and CCMA with respect to the issue of whether the conspiracy affected prices during the Original POI. In doing so, the ITC rejected, as unprobative, an economic report prepared by Dr. Joseph P. Kalt[13] and certain results from the civil and criminal antitrust cases. Remand Determination at 15, 16; Pub. Prehearing Br. of Elkem, Pub. R. List 1, Doc. 569R, Ex. 1, Aff. of Joseph P. Kalt ("Kalt Report").

Elkem and CCMA object to the ITC's finding that the conspiracy affected prices during the Conspiracy Period. Elkem asserts that adverse inferences "may not be used[ ] to reach an incorrect factual determination* * * * " Elkem's Mem. Supp. Mot. J. Agency R. ("Elkem Mem.") at 25. Elkem contends that "the record as a whole left no room for doubt that the dumped imports were a cause of grievous injury to the domestic ferrosilicon industry." *Id.* at 27. In

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[13] At the time Dr. Kalt authored his report, he served as the Ford Foundation Professor of International Political Economy at the John F. Kennedy School of Government, Harvard University, and a senior economist at Lexecon, Inc., an economics consulting firm. *See* Kalt Report at 1.

this connection, Elkem claims that the ITC improperly rejected the Kalt Report on remand and the results of the trial courts in the antitrust litigations. According to Elkem, such evidence illustrates that the conspiracy was "largely ineffective" and undermines the ITC's finding that the conspiracy affected domestic prices. Elkem Comments at 16. Thus, Elkem argues that the ITC's use of adverse inferences to find that the conspiracy affected prices during the Conspiracy Period is neither supported by substantial record evidence nor in accordance with law.

The ITC insists that the adverse inference it chose was based on a sound rationale. First, it maintains that under the circumstances "it was reasonable for the ITC to disregard entirely the pricing information that the domestic producers submitted [during the Original POI] and rely on adverse inferences" on reconsideration. ITC's Mem. Opp'n Pls.' Mot. J. Agency R. at 23. Moreover, the ITC argues that it properly rejected the Kalt Report and the findings from the antitrust litigations. With respect to the Kalt Report, the ITC points out that it "expressly stated [in the Remand Determination] that Dr. Kalt's market structure analysis could not be reconciled with information in the record indicating that the domestic industry's loss of market share was attributable solely to three conspirators and to small producers that ceased production in 1989." Rebuttal Comments at 20 (citing Remand Determination at 25 n.76). In addition, the ITC disputes the probative value of District Judge William M. Skretny's finding, which was made for the purpose of sentencing, that prices of commodity ferrosilicon were not affected except during eleven weeks of the Conspiracy Period. The ITC argues that "[t]his was not, as plaintiffs maintain, a finding that the conspiracy was ineffective during the remaining period—only a conclusion that the government had not satisfied its burden to prove the effects of the conspiracy." *Id.* at 17. The ITC disputes the probative value of the civil litigation verdict that certain specialty steel producers had not suffered damages as a result of American Alloys's participation in the price-fixing conspiracy on the grounds that "[t]he verdict did not pertain to all ferrosilicon purchasers * * * [n]or did it encompass all the conspirators* * * * " *Id.* Thus, the ITC contends that "the litigation results selected by plaintiffs establish merely that CCMA/SKW and American Alloys had each obtained a favorable verdict in one respective piece of litigation." *Id.* at 18.

The court finds the ITC's use of adverse inferences, for the Conspiracy Period, to be in accordance with law. As discussed *supra*, the ITC properly determined that Conspirators' failure to reveal the price-fixing conspiracy significantly impeded the investigation. This failure serves as a basis for the use of BIA, and as a valid justification for the taking of adverse inferences. *Chung Ling I*, 16 CIT at 640, 805 F. Supp. at 49. In addition, the adverse inference taken here, i.e., that the underselling and negative price effects experi-

enced by the domestic industry were a product of the domestic producers' own actions, conforms with the rationale behind the adverse inference rule—" 'when a party has relevant evidence within his control which he fails to produce, that failure gives rise to an inference that the evidence is unfavorable to [that party].' " *Alberta Pork*, 11 CIT at 580, 669 F. Supp. at 459 (internal quotation omitted); *see also Rhone Poulenc*, 899 F.2d at 1190–91 ("The agency's approach fairly places the burden of production on the importer, which has in its possession the information capable of rebutting the agency's inference.").[14]

In addition, the court finds that the ITC's underselling finding is supported by substantial evidence on the record. The ITC compared the prices of domestic ferrosilicon charged by the Conspirators with the prices of imported ferrosilicon and observed that during the Conspiracy Period, imports of ferrosilicon undersold the domestic product more frequently than in the months preceding and following the conspiracy. *See* Remand Determination at 18–19 (citing Remand Staff Report tbls. III–1–6, –7a–c, –8a–c, –9a–b). While it may be the case that certain information on the record could be interpreted to reach a conclusion different than the one reached by the ITC, the court will nevertheless uphold the agency's determination if it is substantiated by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Consol. Edison*, 305 U.S. at 229; *see also Consolo*, 383 U.S. at 620 ("[T]he possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." (citations omitted)). The court finds that the evidence cited by the ITC fairly supports its conclusions with respect to the effect of the conspiracy during the Conspiracy Period based on these comparisons.

The evidence submitted on remand by Plaintiffs does not compel a different finding. Turning to the Kalt Report, the court notes that in conducting his analysis, Dr. Kalt examined the same record evidence that the ITC did in the course of its investigation, although he came to different conclusions. *See* Kalt Report at 4 (indicating that Dr. Kalt "had access to all of the record evidence now before the ITC, including from its original investigations, its changed circumstances reviews, its reconsideration proceedings in 1999, and the materials from the antitrust litigation that have been brought into the record evidence of the ITC."). Dr. Kalt did not dispute the accuracy of the

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[14] Moreover, the court finds unconvincing Elkem's argument that adverse inferences cannot be used where the relevant information sought was later produced and present before the agency. *See* Elkem Mem. at 27–28. Here the court is reviewing a determination reached on reconsideration, not a new proceeding. That the Conspirators complied with the ITC's requests for information concerning the price-fixing conspiracy in the context of the reconsideration does not cure their earlier failures, and the ITC's continued use of adverse inferences remains proper. *See* 19 U.S.C. § 1677e(c) (response to information request must be timely). This is particularly the case in the circumstances present here, where the nature of the information withheld went to the heart of the ITC's analysis in the original final determinations.

ITC's data concerning price. *See id.* at 28. Rather, he interpreted the data differently than did the ITC.

Three examples suffice to make this point. First, the ITC and Dr. Kalt arrived at different conclusions concerning the relative positions of power occupied by the Conspirators and nonconspirators. The ITC concluded that the Conspirators "collectively represented a significant majority of U.S. production throughout the original periods of investigation" such that they occupied a "dominant position in the domestic industry" and that "factors that affected their prices [i.e. the price-fixing agreement,] would affect prices of the industry as a whole, including those of the nonconspirators* * * * *"[15] Remand Determination at 10, 19. Dr. Kalt, in contrast, concluded that

> [d]ozens of sellers of ferrosilicon, not the least of these being the many producers and brokers of imported ferrosilicon, were outside of the price floor agreement of certain U.S. producers. These nonparticipant sellers demonstrably competed vigorously to sell in the U.S. marketplace. Moreover, they demonstrably were able to vary their supplies in response to more or less attractive prices. Such conditions rendered the price agreement by three U.S. ferrosilicon producers to set floor prices ineffective.

Kalt Report at 5. Dr. Kalt's conclusion, however, appears to make the ITC's point, i.e., that the Conspirators' attempts to keep the price of ferrosilicon up allowed foreign producers to undersell them.

Second, Dr. Kalt and the ITC reached different conclusions with respect to the effect of the Conspirators' behavior on the domestic market. The ITC not only emphasized in the Remand Determination that the mere existence of the conspiracy was sufficient to justify the use of adverse inferences regarding the conditions of competition in the industry, but also performed its demand and underselling analyses discussed *supra*. Remand Determination at 14. In contrast, a large portion of the Kalt Report is devoted to demonstrating that the conspiracy was not "successful" in maintaining the price floor.[16] It is worth noting, however, that for the price-fixing conspiracy to have provided foreign competitors with a price advantage, it is not necessary for it to have been "successful" in maintaining the price floor,

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[15] In addition, the ITC concluded on remand that its finding exonerating AIMCOR and Globe "does not undercut the findings the Commission made in its 1999 opinion concerning either the pervasiveness or the significance of the misrepresentations and omissions that domestic ferrosilicon producers made during the original investigations" because "they both were relatively small producers" compared with the Conspirators. Remand Determination at 10.

[16] *See* Kalt Report at 6 ("A successful price fixing agreement would not fix prices at less than costs, and any upward pressure on prices that such an agreement might be asserted to have had would mean, if anything, that absent the agreement, domestic producers' prices would have been even further below cost than actually observed."); *id.* at 13 ("Success in raising prices through price fixing, for example, would not explain domestic producers finding it necessary to sell at prices below costs in order to meet competition from rising imports. Such financial conditions would still provide a sound basis for concluding that imports were materially injuring the domestic industry."); *id.* ("It is recognized in economics that *agreeing* to fix prices and *succeeding* are not the same.") (emphasis in original); *id.* at 14 ("[T]hese imports overwhelmed the prospect of successfully establishing price floors."); *id.* at 22 ("It is clear, however, that there is no pattern of prices successfully being maintained at a common floor.").

but only that it kept some domestic producers' prices higher than they would have otherwise been. This conclusion appears to have been fully justified by the ITC's analysis. In addition, this is, in part, the conclusion reached by Judge Skretny who found that the conspiracy was effective during a portion of the time it was in effect. See Non-Pub. R. List 2, Doc. 776R, Fig. 13a.

Third, with respect to the record evidence concerning an observed decrease in demand and a correlative drop in prices during the Original POI, as noted in the BIA discussion *supra*, the ITC came to the conclusion that "a reason for the price depression was the business cycle for ferrosilicon." Reconsideration Determination at 31. Dr. Kalt disagreed with the suggestion that "declining domestic and import prices can[ ] be attributable *solely* to demand conditions." Kalt Report at 29 (emphasis added). Rather, he concluded that

> [i]t follows from the basic economics of supply and demand that, for any given demand conditions, had low-priced imports not been so abundantly supplied to the U.S. market, prices would have been higher in that market and such material injury to domestic producers as below-cost selling would have been mitigated.

Id. That the ITC and Dr. Kalt reached different conclusions with respect to the significance of the effect of declining demand on prices does not prevent the court from sustaining the ITC's finding, so long as it is supported by substantial record evidence.

This court finds that the Conspirators' misconduct was sufficient to justify the ITC's findings with respect to the effect of the conspiracy on prices during the Conspiracy Period, and that Plaintiffs have not demonstrated that the inferences made were used to reach conclusions that were, in fact, untrue. It is well settled that "the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Consolo*, 383 U.S. at 620. As the accuracy of the pricing data is not in dispute, Elkem and CCMA have done no more than urge a different interpretation of the evidence from that expressed by the ITC. The record, however, reasonably supports the conclusions drawn by the ITC with respect to underselling and the overall decline in prices during the Original POI. With respect to the ITC's rejection of selected antitrust litigation results and findings and Elkem's and CCMA's claims that the ITC was somehow bound by such findings, the ITC is charged by Congress to administer the trade laws, and make its own findings, by means of its own investigations with respect to material injury. *See, e.g.*, 19 U.S.C. §§ 1673d(b) ("The Commission shall make a final determination of whether * * * an industry in the United States * * * is materially injured, or * * * is threatened with material injury, or * * * the establishment of an industry in the United States is materially re-

tarded, by reason of imports [of subject merchandise]."); *see also Chung Ling II*, 16 CIT at 849, 805 F. Supp. at 63 ("[I]n an injury investigation by the Commission domestic producers have no burden of proof * * * but their cooperation in fully responding to questionnaires is essential for the Commission 'to gather the data needed for an accurate determination.' ") (internal citation and quotation omitted). It is clear from the Remand Determination that the ITC complied with the court's instructions that "should evidence with respect [to whether the conspiracy actually affected prices] be presented during the course of the further proceedings on remand, the ITC shall consider such evidence as it would consider any other evidence on the record." *Elkem IV*, 26 CIT at ___, 193 F. Supp. 2d at 1325. The ITC examined the Kalt Report but did not find it probative. Remand Determination at 16 ("We have examined Dr. Kalt's analysis carefully and find that it lacks probative value for purposes of these proceedings."). In the end, the Report is evidence, but not conclusive evidence. Thus, as the ITC's use of adverse inferences has been justified by the Conspirators' behavior, and the Plaintiffs having failed to demonstrate that the findings based on these inferences are factually incorrect, these findings are sustained.

C. *The ITC's use of an adverse inference for the time period outside the Conspiracy Period is not supported by substantial evidence on the record*

On remand, the ITC took an adverse inference that the conspiracy affected domestic prices not only during the Conspiracy Period, but also during the periods preceding and following the Conspiracy Period. Remand Determination at 19–20 ("[W]e have taken an adverse inference that the conspiracy affected prices during those portions of the period of investigation where there has been no judicial finding that the conspiracy was in effect."). Thus, the ITC concluded that the conspiracy affected prices during the entire Original POI. *Id.* at 19. The ITC explained that "[a]nalysis that would focus on periods when the conspiracy may not have been in effect, or only on transactions involving nonconspirators, would merely serve to reward American Alloys, CCMA, and Elkem for making material misrepresentations and omissions which continue to pervade the current record." *Id.* at 20.

The ITC also provided a separate basis for its finding that the conspiracy affected prices during a period of time outside that in which there was a judicial determination that the conspiracy existed. Remand Determination at 21. The ITC stated:

> The Commission has the discretion to establish an appropriate time frame for its investigations in antidumping and countervailing duty proceedings. A substantial portion of the pertinent periods of investigation in these proceedings encompasses the period in which there are judicial findings concern-

> ing, or guilty pleas acknowledging, the existence of a price-fixing conspiracy; additionally, the guilty pleas of American Alloys and Elkem do not state that the conspiracy existed only from the fourth quarter of 1989 through the second quarter of 1991. In any event, there is no basis to conclude that at some point in 1991 the ferrosilicon market transformed overnight from one characterized by price-fixing to one characterized by unfettered price competition. Consequently, if we were to weigh the evidence in the record concerning those portions of the period of investigation where the conspiracy was and was not judicially found to be operative, we would still conclude that a significant condition of competition affecting domestic prices during the original periods of investigation was the price-fixing conspiracy.

Id. at 21–22.

Elkem contends that the ITC's use of adverse inferences to find that the conspiracy affected prices even where the conspiracy was not found to have existed is not supported by substantial evidence on the record. First, Elkem argues that "there was no missing information concerning the scope or duration of the conspiracy," Elkem Comments at 23; second, the inference is factually inaccurate because "[t]here was no basis in the record for finding that the conspiracy was in place during the entire [Original] POI." *Id.*

The ITC counters that its use of adverse inferences on remand was justified. First, contrary to Elkem's argument, "the record before [the ITC] on conditions of competition was not complete because it did not contain reliable information from the conspirators on how they established the prices during any portion of the original periods of investigation." Rebuttal Comments at 22. Second, "case law does not state that an agency cannot use an adverse inference unless that inference is the most accurate information available," and that "[i]n any event, the inference was based on accurate information in the record *concerning the conspiracy period.* The ITC resorted to such information by necessity because it did not have accurate information from the conspirators concerning how they established prices during any portion of the period of investigation." *Id.* at 23 (emphasis added). Thus, the ITC argues that its "limited" adverse inference "was warranted and in accordance with law." *Id.*

Having determined that the ITC reasonably found that the domestic industry's failure to reveal the price-fixing conspiracy significantly impeded the ITC's investigation, the question remains whether the ITC's finding, vis-à-vis the adverse inference it took on remand, was "based upon a sound rationale." *See Alberta Pork*, 11 CIT at 580, 669 F. Supp. at 459. It is well settled that the court can only review the ITC's decision on the basis of the reasons set forth by the agency. *See SEC v. Chenery Corp.*, 318 U.S. 80, 94 (1943) ("[T]he orderly functioning of the process of review requires that the

grounds upon which the administrative agency acted be clearly disclosed and adequately sustained."). It does not appear that the ITC had a sound rationale in making the adverse inference that the conspiracy affected prices during the entire Original POI, and not just during the period in which the conspiracy was actually in effect. In this respect the court agrees with Elkem that "[t]here was no basis in the record for finding that the conspiracy was in place during the entire [Original] POI." Elkem Comments at 23. Here, the ITC itself commenced reconsideration proceedings during which evidence was presented. Much of the evidence concerned the time frame of the price-fixing conspiracy. None of this evidence discussed by the ITC in its Reconsideration Determination, however, supports an inference that the conspiracy existed during the entire Original POI. While the ITC may justifiably conclude that the "failure [to reveal the conspiracy] gives rise to an inference that the evidence is unfavorable to" Plaintiffs, it may not use the inference to reach a conclusion that appears to be at odds with the known facts, *see Alberta Pork*, 11 CIT at 580, 669 F. Supp. at 459, and an attempt to do so on the part of the ITC cannot be said to be supported by substantial evidence on the record. "The substantial evidence standard was developed to avoid * * * arbitrary uses of discretion. Guesswork is no substitute for substantial evidence in justifying decisions." *China Nat'l Arts & Crafts Imp. & Exp. Corp. v. United States*, 15 CIT 417, 423–24, 771 F. Supp. 407, 413 (1991). Here, there is no suggestion in the evidence cited by the ITC that the conspiracy commenced prior to October 1989. This being the case, the ITC cannot, using the device of adverse inferences, invent a price-fixing conspiracy during the period outside the time period during which the conspiracy was and was not found to be in effect, i.e., prior to October 1989 (the start of the Conspiracy Period) and from June 1991 (the end of the Conspiracy Period) to June 1993 (the end of the Original POI). In addition, the ITC cannot construct a conspiracy using the idea that "if" it had in fact "weigh[ed] the evidence in the record concerning those portions of the period of investigation where the conspiracy was not judicially found to be operative," it "would" have concluded that the price-fixing conspiracy was in effect. Thus, the court remands the matter so that the ITC may set forth the evidentiary basis for the adverse inference that the price-fixing conspiracy affected prices throughout the entire Original POI.

On remand the ITC shall revisit its finding with respect to the time period outside of the Conspiracy Period. If it should conclude that its findings on remand with respect to this period are justified it shall: (1) state with specificity the evidence that the price-fixing conspiracy affected prices during the entire Original POI; (2) weigh the evidence in the record concerning those portions of the Original POI where the conspiracy was not judicially found to be operative; and (3) explain with specificity what information in the record, if any,

supports the adverse inference made on remand that the conspiracy affected prices during the periods preceding and following the Conspiracy Period.

CONCLUSION

For the reasons set forth above, the court remands this matter to the ITC for further proceedings in accordance with this opinion. Such remand results are due within ninety days of the date of this opinion, comments are due thirty days thereafter, and replies to such comments eleven days from their filing.

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Slip Opinions

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